Supreme Court, U. S.
FILED
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No. 96-313

In The

Supreme Court of the United States

October Term, 1996

James Pruitt

Petitioner

v.

National Casualty InsuranceCompany

On the Petition for Writ of Certiorari

To The Appellate Court,

of Illinois, Third District

PETITION FOR WRIT OF CERTIORARI

James Pruitt
Petitioner
304 N. Broadway
Joliet, Illinois 60435
(815) 723-7586

QUESTIONS PRESENTED FOR REVIEW

1. Do the following democrations indicate offer, acceptance, consideration, breach and damages?

Approximately 3:30 p.m. on February 13, 1992, Respondent for a valuable consideration, through David McElwee, Agent from O'Dell and Wathan Insurance Agency, Inc., entered into an agreement in writing with Petitioner, a copy of it is attached, marked "Exhibit E" and made a part of this petition. In it, Petitioner and Respondent agreed that Respondent would insure Petitioner's property (building) and personal property (contents) against loss by fire. Petitioner on his part agreed to pay a down payment and balance of premium in monthly installments. Petitioner has performed all the conditions of the agreement on his part to be performed.

Respondent has failed to perform the agreement in that he failed to pay $75,000 for damage to the subject building, $50,000 for damage to Petitioners personal property and weekly lost net business profit, or any part of that sum, although payment demanded by Petitioner are proper.

Petitioner has been damaged by the loss of two businesses, the use of settlement proceeds, the earned interest from settlement proceeds and had to incur substantial court cost to bring forth this suit to recover said insurance benefits to which he is rightfully entitled.

2. Whether the Appellate Court of Illinois Third District exceeded it's reviewing authority or otherwise erred in finding that executing of the insurance contract and delivered by Respondent to Petitioner before March 14, 1992, constituted the only act to which the Respondent is obligated to pay petitioner for loss of building, personal property, and loss profits. Specifically, whether the Appellate Court applied an improper standard or otherwise erred upholding the decision of the Trial Court, without regard to the Illinois Insurance Codes and based it's decision solely on the Court's reading of the defense counsel, the two police officers, and the two expert fire investigators histories. And in failing to set aside the Trial Court's Judgment in favor of the Respondent and review the case according to Illinois Civil Appellate Practice,

the Illinois Insurance Codes, the usual course of judicial proceeding and other appeal courts on the same.

3. Whether the Trial Court abused its discretion by denying Petitioner's Motion for Judgment Notwithstanding the Verdict or otherwise erred when Petitioner submitted all fact evidence to indicate the Respondent's breach of said multi-peril contract.

4. Whether the Trial Court exceeded its reviewing authority or otherwise erred in denying Petitioner's Motion for New Trial when: all of the deliverations of the jury were tainted by improper remarks, (by defense counsel and his withesses) or prejudicial consideration and the court's failing to determine that the findings of the Jury was unreasonable, arbitrary and not based upon any of the evidence.

5. Whether the Appellate Court exceeded its reviewing authority or otherwise erred by, considering the conflict testimonies by the Respontent's witnesses only in it's review, and not reviewing the facts evidence submitted to the courts according to the Supreme Court Rules, Illinois Insurance codes and codes of Judicial proceeding as other cases of the same

has been decided.

6. Why should the respondent's Bill Of Cost be taxed against petitioner when the courts disregarded the documents provided by petitioner to the courts, and with disregard for the documentation provided by petitioner to the respondent, did unreasonable and vexatious deny said claim for property loss in direct violation and breach of said multi-peril insurance policy and the Illinois Revised Statutes, and result of said vexatious deny, petitioner has had to incur substantial legal expenses and costs to bring this suit to recover said insurance benefits to which he is rightful entitle.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the UNITED STATES SUPREME COURT are those in the caption, except for the respondent, Thomas J. Finn, represented the respondent in Illinois Trial Court of the Twelfth District No. 93L88 and the same in the Appellate Court of Illinois Third District No. 3-95-0221.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....I

PARTIES TO THE PROCEEDINGS.....V

TABLE OF AUTHORITIES.....X

STATE STATUES, REGULATIONS, GUIDELINES, RULES.....XI

APPENDICES.....XIII

OPINIONS BELOW.....1

BASIS FOR JURISDICTION.....3

STATEMENT OF THE CASE.....3

REASON FOR GRANTING THE WRIT.....7

I. THIS CASE PRESENTS AN IMPORTANT QUESTION OF THE LAW ABOUT THE EXTENT TO WHICH CONSISTENT WITH THE FEDERAL RULES, ILLINOIS CIVIL APPELLATE PRACTICE CODES, ILLINOIS INSURANCE CODES, THE UNUSUAL COURSE OF JUDICIAL PROCEEDING APPLIED TO ALL CIVIL CASES, BUT THE OUT COME OF THIS CASE IS DIFFERENT, WHEN.....7

TABLE OF CONTENTS- (CONTINUED)

a. The Appellate Court of Illinois Third District Erred in Failing to Make a Separate Determination of the Trial Court of the Twelfth Judicial Circuit, that the Insurance Policy Indicated Offer, Acceptance, and Consideration Provisions, and Plaintiff's Statement Cause of Action as Evidence.

II THE APPELLATE COURT OF ILLINOIS THIRD DISTRICT ERRED IN AFFIRMING THE JUDGMENT ENTERED BY THE TRIAL COURT OF ILLINOIS TWELFTH JUDICIAL CIRCUIT IN FAVOR OF THE DEFENDANT AND IN FAILING TO DETERMINE WHETHER THE VERDICT WAS IN ACCORDANCE WITH THE PLEADING SET FORTH IN.....13

A. Plaintiff's Complaint, "Breach of Contract":

B. The Defendant's Rejected Proof of Loss Statemtns and Letter of Pleadings Exhibit I, ...pp. 89 -91

III THE APPELLATE COURT DECISION UPHOLDING THE JUDGMENT OF THE CIRCUIT COURT OF WILL

TABLE OF CONTENTS (CONTINUED)

COUNTY, ILLINOIS CONFLICTS WITH PRECEDENTS OF ILLINOIS CIVIL APPELLATE PRACTICE, ILLINOIS INSURANCE CODES, AND PRECEDENTS OF THIS COURT.....19

A. The Appellate Court Erred in Failing to Make a Separate Determination of Whether the Conflicting Testimonies by the Defendant's Witnesses were within the Complaint and Pleadings of the Case where there was no Evidence Submitted by the Witnesses or the Defendant of the Alleged Objections and Refusal to Pay Over the Insurance Policy Proceeds,.....19

B. The Appellate Court Erred in Upholding the Judgment Entered by the Trial Court in Favor of the Defendant. And in Failing to Make a Separate Determination of Whether "All of the Evidence, when Viewed in its Aspect Most Favorable to the Opponent, So Overwhelmingly Favors Movant that no Contrart Verdict on that Evidence Could Ever Stand", and.....24

TABLE OF CONTENTS - (CONTINUED)

Contrary Verdict Based on that Evidence Could Ever Stand", and.....24

C. The Appellate Court Erred in Upholding that the Trial Court Properly Denied Plaintiff's Motion for New Trial when the Finding of the Jury was Unreasonable, Arbitrary and not Based upon any of the Evidence.....26

IV. ASIDE FROM THE DOCTRINAL IMPORTANCE OF THE QUESTIONS PRESENTED, AN ADDITIONAL REASON TO GRANT THE PETITION IS THE DRAMATIC IMPACT THE DECISION BELOW WILL HAVE ON THE ENTIRE COURT'S DECISION OF AN INSURANCE COMPANY'S EXECUTING AND DELIVERING AN INSURANCE CONTRACT, AND REFUSAL TO PAY OVER THE POLICY PROCEEDS. THIS COURT'S DECISIONS UPHOLDING THE ILLINOIS'S INSURANCE CODE, AND THE USUAL COURSE OF APPELLANT PROCEEDINGS ARE ARBITRARY AND CAPRICIOUS.....28

TABLE OF AUTHORITIES

U.S. - Hall v. Time Insurance Co., M.D. GA., 671 F. Supp. 768.....6

Latex Glove Co., Inc., v. Alfred J. Giraen, 146 Ill. App. 3d 868, 10 Ill. Ded. 488.....7

Rodney K. Mohr v. Dix Mutual County Fire Insurance Company, 143 Ill App. 3d 989, 97 Ill. Dec. 831.....8

Beddow v. Hicks, 303 Ill. App. 247, 25 N.E. 2d 93.....8

F.E. Homes & Son Const. Co., Inc., v. Giualdoni, Electric Service, Inc. 61 Ill. Dec. 883; 435 N.E. 2d 724, 105 Ill App.....8

City of Cleveland v. Petr Kiewit Sons' Co., 624 F. 2d 749 (6th Cir. 1980).....11

Harris v. Zurich Insurance Co., 527 F 2d 528 (8th Cir. 1975)..11

Peterson v. Durand Farmers Mkt., Five Insurance Co., 30..3 Ill. App. 128.....13

U.S. - Time Oil Co.v. Cigna Property & Casualty Insurance Co., W.D. Wash., 743 F. Supp. 1400.....13

Appeal and Error 281 (1).....16

Trial 251 (2).....4

Evidence 222 (1)

TABLE OF AUTHORITIES - (CONTINUED)

Villa, 202 Ill. App. 3d at 1089, 148 Ill. Dec. 372, 560 N.E. 2d 969; Accord Topp v. Logan (1990), 197 Ill. App 3d 285, 298, 143 Ill. Dec. 519, 554 N.E. 2d 454; Monier v. Winkler (1987), 158 Ill. App. 3d 724, 729, 110 Ill. Dec. 411, 511, N.E. 2d 246.....18

MO. - Continental Casualty Co. v. Monarch Transfer & Storage Co., 23 S. W. 2d 209; Vt. - Aseltine v. Perry, 54 A. 190, 75 Vt. 208; U.S. - Gilbane v. Fidelity & kCasualty Co. of N. Yn., R.I., 163 F. 673, 90 C.C.A. 265; Neb - Bleicher v. Heater, 4 N.W. 2d 897, 141 Neb. 787.....19

Frank A. Queen et al. v. Vermont Mutual Insurance Company, 32 Mass. App. Ct. 343.....20

R. Stern and E. Gressman, Supreme Court Practice 208-09 (6th ed. 1986).....21

I.C.P. [2.4], [2.5.....12

I.C.P. 3451.....11

I.C.P. 12

Fed. R. Civ. P 50(6).....12

TABLE OF AUTHORITIES- (CONTINUED)

Insurance 332 (1).....7

Incurance 114.....13

Insurance 559, 559(1).....6

Insurance 560 (3), (1).....6

Damages 147.....7

Insurance 188 (3).....19

Insurance 124.....13

Insurance 128.....13

Fire Insurance 254.....12

Insurance 544.....10

Insurance 602.3.....7

Damages 163(1).....7

Damages 103,117.....8

Insurance 602.10 (1).....8

Appeal and Error 302 (1).....12

TABLE OF CONTENTS (CONTINUED)

APPENDICES:

A ORDER OF APPELLATE COURT.....App. 1

Files November 16, 1995

B PETITION FOR REHEARING.....App. 11

Filed December 4, 1995

C APPELLATE COURT DENIED PETITION FOR REHEARING.....App. 42

Filed December 20, 1995

D AFFIDAVIT OF INTENT.....App. 44

Filed December 30, 1995

E PETITION FOR LEAVE TO APPEAL.....App. 46

Filed January 11, 1996

F THE SUPREME COURT NOTICE, NENIED PETITION.....App. 72

Filed April 2, 1996

G PLAINTIFF'S COMPLAINT.....App. 73

Filed July14, 1993

TABLE OF CONTENTS (CONTINUED)

H AMENDED COMPLAINT.....App. 75

Filed September 27, 1993 27, 1993

I RESPONDENT'S PLEADING.....App. 88

Filed, October 28, 1992

J POST TRIAL MOTION.....App. 93

Filed February 22, 1995

K CIRCUIT CLERK DENYING POST TRIAL MOTION

.....App. 101

Filed March 6, 1995

OPINIONS BELOW

On February 8, 1995 , the Will County Circuit Court granted Respondent, National Casualty Insurance Company a Jury Verdict against Petitioner's complaint which sets forth Cause of Action for Breach of Contract. Petitioner, filed a Notice to Respondent for post-trial or a new trial February 22, 1994, and filed Motion for a Post Trial or an New Trial and Judgment Notwithstanding Verdict on February 22, 1995. On March 3, 1995, an Amended Motion was filed. On March 6, 1995, Petitioner's Post Trial Motion, Motion for a New Trial and Motion for Judgment Notwithstanding Verdict was denied. On March 27, 1995, a Notice of Appeal was filed.

On November 16, 1995, the Appellate Court of the Third District, Will County, Illinois affirmed the judgment of Trial Court of the Twelfth Judicial Circuit, Will County Illinois. A true and Accurate copy of Opinion is attached, AL. EX. A. P. 1 - 8. On December 4, 1995, a Petition for Rehearing was filed in the Appellate Court. A true and Accurate copy is attached PL. EX. B.P. 9 - 19. On December 20, 1995, said

Petition for Rehearing and Certificate of Importance was denied by the Appellate Court. A true and accurate copy is attached PL.EX.C. P. 20. On December 30, 1995, Petitioner filed an Affidavit of Intent to File a Petition for Leave to Appeal. A true and accurate copy is attached, PL.EX. D.P. 21.

Basis for Jurisdiction

The Appellate Court of Illinois Third District affirmed the decision of the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois November 16, 1995. The Appellate Court, on December 20, 1995 denied Petition for Rehearing and Petition for Certificate of Importance. On April 3, 1996, The Supreme Court of the State of Illinois Denied Petition for Leave to Appeal. On April 22, 1996, a request was filed with the Illinois Supreme Court to Stay of Mandate and Notice of Filing a Writ of Certiorarito the United States Supreme Court.

The United States Supreme Court has Jurisdiction to review this Judgment under 28 U.S.C. 1257, which states in part, "[F]inal" Judgments... rendered by the highest court of a

state in which a decision could be had, may be reviewed by the Supreme Court by Writ of Certiorari...where any title, right, privilege, or immunity is... claimed under the Constitution or Statutes of...the United States." In the present case, a "right under the Fourth Amendment of the United States Constitution.

STATEMENT OF THE CASE

Petitioner brought action against Respondent following delay in settling claim arising when property (building) and personal property (contents) was lost in fire. After making multiple attempts to discuss the dispute with Respondent, Petitioner brought suit seeking compensatory, consequential, and punitive damages for fraud, vexatious delay in settling his claim, and breach of contract. The Circuit Court, Will County, Illinois, Edwin B. Grabick, Jr., entered Judgment in favor of Respondent and Petitioner appealed March 27, 1995, in the Appellate Court of Illinois Third District.

November 16, 1995, the Order of the Court was filed in the Clerk's Office, Ex. A pp. 1-8.

December 4, 1995, a Petition for Rehearing was filed, Ex. C, 3

pp. 9 - 26.

December 20, 1995, the Appellate Court overruled and denied Petition. Ex. C. p. 27.

January 11, 1996, a Petition for Leave to Appeal in the State of Illinois SupremeCourt, eas filed Ex. J.PP. 57 - 75.

April 3, 1996, The Supreme Court of Illinois denied Petition Ex.K. p 76.

Petitioner was for three years, from 1989 - 1992, a business owner duly organized and existed under the laws of the State of Illinois. The Petitioner owned and operated a restaurant and lounge under the nave of "The Other Place" upon the premises and building located at 738-740 Collins Street, Joliet, Will County, Illinois.

The Petitioner maintained and had in effect a special multi-peril insurance policy which on February 13, 1992, approximately 3:30 p.m. at Appellant's business, David McElwee, Agent of O'Dell and Watham Insurance Agency, Inc. sat together and executed a contract.

On March 14, 1992, Respondent, National Casualty Insurance Company executed and delivered to Petitioner his insurance policy

No. MP 002 170. Under the terms Respondent insured Petitioner against loss or damages by fire to the premises described in the policy in the amount of $75,000 for the building and $50,000 for personal property of the term of March 14, 1992, until March 14, 1993.

On April 27, 1992, while the policy was in full force, a fire occured upon the premises and building of the subject property there by destroying said building, Petitioner's personal property, and business. The total loss sustained as a result of this denial was more than the$75,000 for the building and the $50,000 for insured personal property, the amount of the policy in force at the time of the fire.

The Petitioner promptly performed all the conditions of the policy of insurance on his part to be performed, with giving immediate written notice of such loss and furnishing sworn proof of loss.

On October 28, 1992, six months later, the Respondent denied the rejected Petitioner's claim for fire loss and property damage for the following reasons:

A. Intentionally setting or procuring the setting of the fire in question;

At the trial two fire investigation experts testified that the fire had been started when someone poured flammable liquid on the floor and ignited the liquid. Laboratory tests were negative. No witness was called at the trial to testify and no other evidence or proof was submitted to the Court for this cause.

B. Falsely swearing in Petitioner's examination under oath;

C. Lack of an insurable interest in the property (building and contents) at the time of the loss. A true and accurate copy of Defendant's pleadings is attached as Exhibit J.P. 46 - 48.

This issue of Petitioner's Insurable Interest in the property was not presented to the jury nor were any jury instructions regarding this defense tendered, see Trial 251.

No part of the $75,000 for the building nor the $50,000 for Petitioner's personal property, the amount of the insurance payable under the terms of the policy in case of loss, has been paid.

As a direct and proximate result of said vexation denied, Petitioner has lost his businesses, has been denied the sue of the settlement proceeds, has been denied the interest earned from said settlement proceeds, and has had to incur substantial expense to bring forth this suit to recover said insurance benefits to which he is entitled according to the Illinois Revised Statutes, 1983, Ch. 73, Par. 767.

On July 17, 1993, Petitioner promptly proceeded to recover loss of business, loss of building and loss of personal property and extended loss of business profit by the wrongful denial of insurance claim, by filing a complaint for Breach of Contract in the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois See PL. EX. G., P. 39 and PL. EX.H., P. 40 - 45.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS AN IMPORTANT QUESTION OF LAW, ABOUT THE EXTENT TO WHICH, CONSISTENT WITH THE FEDERAL RULES, ILLINOIS CIVIL APPELLATE PRACTICE

CODES, ILLINOIS INSURANCE CODES, AND THE USUAL COURSE OF JUDICIAL PROCEEDINGS APPLIED TO ALL CIVIL CASES, BUT, THE OUTCOME OF THIS CASE IS DIFFERENT.

A The Appellant Court of Illinois Third District Erred in Failing to Make a Separate Determination of the Trial Court of the Twelfth Judicial Circuit, that the Insurance Policy Indicated Offer, Acceptance and Consideration as well as Petitioner Performance of all Contractural Provisions, set forth in the amended complaint as Evidence, Ex. H., pp. 48 - 53.

This case presents the important question of the Rule, Insurance § 559, 559 (1), if the Company denies liability for a loss, and refuses to pay it either for that or another reason, placing it's refusal on a definite ground other than want of notice and proof of loss or a defect in their form or substance, it waves the right to insist on the failure to give notice and make requisite proof as a defense to an action on the policy, U.S. - Hall v. Time Insurance Co., M.D. Ga., 671 F. Supp.

768; see also Insurance 559 (1), 560 (3), (1).

The Appellate Court failed to determine the denial and delay of the Respondent case. The Appellate Court overlooked Illinois Insurance Rule, Contract 332 (1), Complaint which sets forth cause of action for breach of contract must allege facts sufficient to indicate offer, acceptance and consideration as well as Petitioner's performance of all contractural provisions, fact of Respontent's alleged breach, and existence of damages as consequence thereof. The Appellate Court's failing to apply this rule to this case, conflicted with the Appellate Court of Illinois First District, Third Division in Lates Glove Co, Inc. v. Alfred J. Gruen, 146 Ill. App. 3d 868, 100 Ill. Dec. 488. The Appellate Court of Illinois Third District decision in the instant case is in conflict with the Appellate Court of Illinois, Fourth District dicision. Given the importance of the questions presented and the possibility of a conflict among the two Appellate Courts is that the Appellate Court of Illinois Third District overlooked Illinois Insurance Rule 602.3, in determining the Petitioner could recover

damages for profit lost due to the Respondent's allegedly vexatious delaying settling his claim arising when property and personal property was destroyed by fire. In Rodney K. Mohr v. Dix Mutual County Fire Insurance Company, 143 Ill. App. 3d 989, 97 Ill. Dec. 831, Illinois Appellate Court Fourth District held that insured could recover damages for profit lost due to insurer's allegedly vexatious delay in settling his claim arising when farm equipment was destroyed by fire. The conflict between the two Appellate Courts is an additional reason for granting certiorari. The Appellate Court of Illinois Third District failed to determine Illinois Insurance Code, Damages 147, 163 (1) complaint seeking damages for loss of profits due of contract must allege facts which show that allegedly lost profit can be proved with reasonable certainty, were proximately caused by wrongful act of Respondent and were reasonable within contemplation of parties at time contract was formed.

The Appellate Court of Illinois Fourth District held

that: when lost profits sought in breach of contract action arise out of collateral transaction, Petitioner must established damages 11

with reasonable certainty and also show lost profit were within contemplation of the parties at time they entered the agreement. The Appellate Court of Illinois overlooked Illinois Insurance 602.3, and failed to determine whether the Defendant has engaged in vexatious and unreasonable delay in settling claim, as progibited by Insurance Code. The Court failed to consider that Petitioner was forced to file suit to recover and that Petitioner was deprived of use of his property. This question was resolved in Rodney K. Mohr v. Dix Mutual County Fire Insurance Company by the Appellate Court of Illinois. Fourth District where the Appellate Court of Illinois Third District dismissed Illinois Insurance Codes, Illinois Civil Appellate practice and the usual course of judicial proceedings, in this case see Insurance 602.10 1, see also F.E. Homes & Son Const. Co., Inc., v. Gualdaoni Elec. Service, Inc. 61 Ill. Dec. 883, 435 N.E. 2d 724, 105 Ill. App. 3d 1135. This Case

also presents the important question of why, in Beddow v Hicks, 303 Ill. App. 247, 25 N.E. 2d 93, did the Appellate Court of Illinois Third District hold, Insurance 114, the insured is entitled to recover under a fire policy when he has an "Insurable Interest" for losses under term of the policy not exceeding the amount for which he is unsured, and in this case the same court overlooked, or failed to determine the Rule. In Rodney K. Mohr v. Dix Mutual County Fire Insurance Company, Appellate Court of Illinois Fourth District, Defendant's conduct constituted a violation of Section 155 of the Illinois Insurance Code (Ill. Rev. Stat. 1983, Ch. 73 Par. 767).

The Appellate Court of Illinois Third District, ORDER, stated, "when the Petitioner's property was destroyed by fire, the Respondent refused to pay over the policy proceeds". The Appellate Court erred in determining whether the Respondent violated Section 155 of Illinois Insurance Code (Ill. Rev. Stat. 1983, Ch. 73, Par. 767), which conflicted with Illinois Appellate Court's ORDER, also stated, "The Petitioner sued

Appellate Court's ORDER, also stated, "The Petitioner sued the Respondent for breach of contract". The Appellate Court of Illinois Third District erred in failing to make a determination of whether the Defendant breached the contract according to Illinois Insurance Code, Contract 332 (1). In Latex Glove Co., Inc. v. Alfred J. Gruen, Illinois Appellate Court, First District, hald that complaint which set forth cause of action for breach of contract must allege fact sufficient to indicate offer, acceptance and consideration, as well as Petitioner's performance of all contractual provisions, fact of Respondent's alleged breach of damages as consequence thereof.

II. THE APPELLANT COURT OF ILLINOIS THIRD DISTRICT ERRED IN AFFIRMING THE JUDGMENT ENTERED BY THE TRIAL COURT OF ILLINOIS TWELFTH JUDICIAL CIRCUIT IN FAVOR OF THE DEFENDANT AND IN FAILING TO DETERMINE WHETHER THE VERDICT WAS IN ACCORDANCE WITH THE PLEADINSET FORTH

A. Respondent's Complaint, "Breach of Contract".

Exhibit H, pp. 48 - 53.

As a general rule Contract 332 (1), "Complaint which sets forth cause for breach of contract must allege facts suffricient to indicate offer, acceptance, and consideration, as well as plaintiff's performance of all contractural provisions, facts of defendant's alleged breach and existence of damage as consequence thereof", as Petitioner did in the complaint, Exhibit., pp. 48 - 53. The Illinois Appellant Court rendered a decision in conflict with this rule and with the Appellant Court of Illinois First District, Third Division, in Latex Glove Co. Inc., v. Alfred J. Gruen, 146 Ill. App. 3d 868, 100 Ill. Dec. 488 (1986).

B. The Respondend rejected Proof of Loss Statement and Letter of Pleadings, Exhibit I, pp. 54 - 56.

As a general rule, Insurance § 544, the issue of action on insurance policy are confined to such matter as are affirmatively alleged on the one side and surriciently denied on the other. Matters constituting an affirmative defense not

presented by pleadings are not in issue. "Material allegations in pleadings in an action on insurance policy must be proved in if put in issue. The defense counsel raised many issues that were not within the complaint or pleadings and without evidence to submit to the jury, and continued to make improper statements to the Jury without proof or evidence, and caused the Jury to deliver an unfair verdict. Harris v. Zurich Insurance Co., 527 F. 2d 528 (8th Cir. 1975). See also City of Cleveland v. Peter Kiewit Sons' Co., 624 F. 2d 749 (6th Cir. 1980). In the Appellate Court ORDER p. 1, state; "According to the Respondent, the petitioner intentionally set the fire, and made material misrepresentations about the losses he sustained as a result of the fire". The Appellate Court erred in upholding the remark of the Respondent without proof or evidence, and erred in failing to determine whether the remarks was justified on the grounds of Illinois Insurance Code, and the usual course of judicial proceedings.

The Appellate court of Illinois Third District erred in affirming the Judgment entered by the Trial Court of Illinois

Twelfth Judicial Circuit without determining whether the verdict was in accordance with the pleadings, evidence, or findings, which conflicts with Illinois Insurance 188 (3). The Appellate Court is in direct conflict with Illinois usual course of judicial proceedings and Illinois Civil Appellate Practice 3451, which sets forth that " if there is no evidence on even as essential issue in favor of the party holding the burden of proof in an issue, the Court should direct a verdict. A court properly directs a verdict when the opposing party has failed to produce some required element of proof in support of its cause of action.

Petitioner Complaint, Ex. H., pp. 48 - 53, set forth cause of action for the Respondent breach of contract. February 8, 1995, judgment was entered in favor of the Respondent, February 22, 1995, an Amended Motion was filed. The issue raised by the motion is whether there is a total failure of proof on any necessary element of the Petitioner's case; and since they submitted no proof of evidence of his pleadings, was the judgment of a legal presumption? The Trial Court denied

Petitioner's motion was completely abusive and was not proper according to Illinois Civil Practice (2.4), (2.5), § 4098. See Fed. R. Civ. P. 50 (6). See also Appeal and Error 302 (1).

March 27, 1995, Petitioner filed an Appeal in the Appellate Court of Illinois Third District. Petitioner submitted all fact evidence to the Court that would give the Court reasons to determine the case according to Illinois Insurance Codes, Illinois Civil Appellate Practice and the usual course of judicial proceedings. After the Appellate Court Review, the Order was in error in affirming the Judgment of the Trial Court that conflicted with all Illinois Insurance Code. The Appellate Court erred in failing to determine the case according to Illinois Civil Appellate Practice. The Appellate Court Decision conflicted with other Illinois Appeal Courts of the same matter.

Appellate Court rendered a decision in conflict with Illinois "Fire Insurance § 254", fire insurance in a personal contract with the insured, and not a contract in rem. It's purpose is not to insure property against fire, but to insure the owner of the

property against loss by fire. U.S. - Time Oil Co. v. Cigna Property & Cas. Ins. Co., W.D.Wash., 743 F. Supp. 1400. See Insurance 124. In the Appellate Court's ORDER, " The Petitioner, James Pruitt, insured his business against the risk of fire by purchasing an insurance policy from the Respondent, National Casualty Insurance Company, the Appellate Court erred in failing to determine that Petitioner was rightfully entitled to recover under a fire policy, when he has an "Insurable interest" for losses under terms of policy and Illinois Insurance Code 114. The Appellate Court's decision, Ex. A. p. 1, stated, "The insurance policy at issue became effective in March, 1992. It provided coverage for the building housing the Plaintiff's business,, a restaurant and lounge called "The Other Place", as well as coverage for the building's contents". A serious controversy arises here. The Appellate Court error in failing to determine the Petitioner is entitled to recover from the policy. This issue conflicts with the Appellate Court of Illinois Second Division in Patterson v. Durand Farmers Mut. Fire Ins. Co., 303 Ill. App. 128, whereof the Court held that

the Company having refused to pay the suit resulted in a judgment in favor of Petitioner. The Appellate Court of Illinois Third District rendered a decision in conflict with Illinois Insurance 128 (1) which sets forth cause of action of establishing an insurance contract between insured and insurer.

III. THE APPELLATE COURT DECISION UPHOLDING THE JUDGMENT OF THE CIRCUIT COURT OF WILL COUNTY, ILLINOIS CONFLICTS WITH PRECEDENTS OF ILLINOIS CIVIL APPELLATE PRACTICE, ILLINOIS INSURANCE CODES, AND PRECEDENTS OF THIS COURT.

A. The Appellate Court erred in failing to made a separate determination of whether the confl icting testimonies by Respondent's witnesses were within the complaint and pleadings of the case where there was no evidence submitted by the insurance policy

proceeds;

The Jury in this case did not hear conflicting testimony as to the Respondent breach of contract which Petitioner complaint sets forth cause of action, they heard conflicting testimony as to the time Petitioner closed and left to check in the motel prior to going to breakfast. NIP'S-Cab, owned and driven by L.B. Pruitt, stated that he received a call to pick up the Petitioner approximately 2:15 a.m., arriving around 2:30 a.m., waited approximately 15 minutes for the Partitioner to appear. Several minutes later the Petitioner appeared. According to the cab driver's testimony, it was about 3:00 a.m. or after before Petitioner left. The police officer drove past the building and noticed smoke coming from the building, in his written report stated that he passed the building about 2:45 a.m. and noticed a Circle Cab parked in front. He did not see Nip's Cab parked there at 2:45 a.m. but approsimately at 3:08 a.m. he noticed smoke coming from the building by being on a call about 1/2 block past Petitioner's business. L.B. Pruitt testified that when he left from in front of Petitioner's business

approximately 3:00 a.m. or later, there was no sign of smoke or fire to be observed. This is one conflict of testimony of the Respondents.

Petitioner testified that he closed his business at 12:00 a.m. as usual on Sunday night. After a birthday party ending at approximately 12:30 a.m. in his lounge. A friend helped clean up and stock the beer coolers, finishing approximately at 1:30 a.m. Because Petitioner's car had been hit by a drunk driver and totaled Friday night before the fire occurred, his girlfriend called a cab while Petitioner was changing clothes. The cab came right away and his girlfriend went out to the cab so that the cab would not leave. At approximately 1:45 a.m.. Petitioner came out, he and the friend who helped to clean up. The cab driver took us to the parking lot joined by the hotel and restaurant where we had breakfast before walking to the motel and checking in at 3:08 a.m. A written statement of Petitioner's girlfriend and friend who helped clean up were taken by the Defendant's private investigation officer weeks after the fire, and submitted to the Court for evidence.

Another police officer testified that he had interviewed Petitioner following the fire and Petitioner stated that he had taken by the Defendant's private investigation officer weeks after the fire, and submitted to the Court for evidence.

Another police officer testified that he had interviewed Petitioner following the fire and Petitioner stated that he had interviewed Petitioner following the fire and Petitioner stated that he had checked into the motel prior to going to breakfast. The police officer did not submit a written statement to the Court for evidence that he had even talked to Petitioner. This is another conflict in the case of the Respondent's witnesses.

In petitioner's girlfriend's written statement, the city inspector, the insurance agent; who sold Petitioner the insurance contract, the Petitioner and all of the other witnesses called, all testified that Petitioner and girlfriend lived in one apartment above the lounge. The police officer testified that the building contained no furniture, as if they were supposed to see furniture and clothes after the building was destroyed by fire; no floor or roof was left on the building after the fire.

Petitioner also submitted photograph taken by the guest who had the birthday party the night business burned up, to the Court for evidence of stock that was there after Petitioner closed and left the business.

The Respondent called two Fire investigation experts, each testified that flammable liquid had been poured on the floor and ignited because of the holes in the floor, although laboratory test for petroleum based accelerates were negative. This is another conflict in testimony by the Respondent's witness who had no evidence to submit to the Court. Petitioner testified that where the experts claimed the holes were burned in the floor is where the friend who helped clean up put the garbage to be taken out Monday when Petitioner returned to open the business.

If the Courts would have weighed the evidence submitted and set aside the verdict for the Respondent, it would have been able to determine that the Jury's verdict was contrary to the manifest weight of evidence as set forth in Appeal and Error 281 (1), and would have ordered a new trial. The Appellate

Court erred by not reviewing the evidence and using the conflicting testimony of the Respondent's witnesses to determine its decision to affirm the judgment of the Circuit Court, Will County, Illinois.

B. The Appellant Court erred in upholding the Judgment entered by the Trial Court in favor of the Respondent and in failing to make a separate determination of whether "all of the evidence, when viewed in it aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on the evidence could ever stand".

At trial Petitioner's complaint of breach of contract; and Respondent's pleading that the Petitioner intentionally set the fire and made material misrepresentation about the losses be sustained as a result of the fire was never introduced by the trial judge as issues and did not determine those issues, in the instructions submitted by the Respondent and given to Jury. The issues raised at trial by the defense counsel was only statement tendered to establish and disprove material facts of

Petitioner. See Evidence 222 (1).

The Appellate Court erred in overlooking the fact that the Petitioner proved all of the element of a prima facie case, including duty, breach, proximate cause, and the extent of damage, whereas the trial court did not so conclude. Mizowek, 64 Ill. 2d at 310, Ill. Dec. 23, 356 N.E. 2d 32.

At trial the Jury did not have any evidence submitted to the court of the Respondent statements as to the denial of insurance covered by the insurance policy executed and delivered March 14, 1992.

At trial Judgment N.O.V. was unproperly denied because Petitioner submitted the insurance policy as the contract entered into between Petitioner and the Respondent and complaint which set forth cause of action for breach of contract, to the courts for evidence to be viewed in its aspect most favorable.

At trial the Respondent submitted no evidence for the Court to weigh, nor did the Respondent call a witness to testify on behalf of his statement in his pleadings. The police

officers, and the two fire investigation experts only testified as to the time of the fire, the extent of damage, and the amount of damage. None of them submitted any evidence to the Court, other than the laboratory test for petroleum-based accelerate which were negative.

C. The Appellate Court erred in holding that the trial court properly denied plaintiff's motion for new trial when the finding of the jury was unreasonable, arbitrary and not based upon any of the evidence.

The verdict was against the manifest weight of evidence because the finding of the Jury was unreasonable, arbitrary and was not based upon any of defendant's evidence, and it is affirmatively shown that the Trial Court clearly abused its discretion. Villa, 202 Ill. App. 3d at 1089, 148 Ill. Dec. 372, 560 N.E. 2d 969; Accord Topp v. Logan (1990), 197 Ill. App. 3d 285, 298, 143 Ill Dec. 519, 554 N.E. 2d 454; Monier v. Winkler (1987), 158 Ill. App. 3d 724, 729, 110 Ill. Dec. 411, 511 N.E. 2d 246.

The Appellate Court erred by not determining that the

Jury's verdict was supported by evidence that Petitioner was denied fair trial. The Appellate Court erred by not determining on its own that a new trial should have been granted, because there was no sufficient evidence submitted by the Respondent to the Court to support the Jury's verdict

The defense verdict was against manifest weight of evidence because the allegedly intentionally setting of the fire in question and the material misrepresentations about the losses did not bring forth considerable direct and circumstantial evidence that plaintiff was guilty of such actions. Petitioner's complaint did set forth cause of action of Respondent's breach of contract.

The defense counsel tendered proposed instructions for the jury, all of which was given and not one of the allegedly breach of contract, or Respondent's objections although, the standard I.P.I. jury instructions submitted, did correctly state the laws, but, did not state the nature of the complaint or pleadings of the case. The Trial Court erred in instructing the Jury , and the I.P.I. instructions that the defense counsel

tendered and proposed was motivated by nothing more than a desire to curtail expression of a particular point of view on controversial issue.

The instructions did not tract the language of Insurance 188 (3) "Instructions given in such an action for premiums, must be in accordance with, and be appropriate under, the pleading in the case". MO.-Continental Casualty Co. v. Monarch Transfer & Storage Co., 23 S. W. 2d 209; Vt-Aseltine V. Perry, 54 A. 190, 75 Vt. 208; U.S. - Gilbane v. Fidelity & Casualty Co. of N.Y., R.I., 163 F. 673, 90 C.C.A. 265; Neb - Bleicher v. Heater, 4 N.W. 2d 897, 141 Neb. 787.

The Court of Appeals, after finding that the I.P.I. instructions are sufficient to inform the Jury of the principles of law involved in the case, failed separately to inquire as to whether the I.P.I. instruction did or not tract the language set forth in Ex. H., pp. 48 - 53 or Ex. I., pp. 54 - 46.

IV ASIDE FROM THE DOCTRINAL IMPORTANCE OF TH E QUESTIONS PRESENTED, AN ADDITIONAL REASON TO GRANT THE

PETITION IS THE DRAMATIC IMPACT THE DECISION BELOW WILL HAVE ON THE ENTIRE COURT'S DECISION OF AN INSURANCE COMPANY'S EXECUTING AND DELIVERING AN INSURANCE CONTRACT, AND REFUSAL TO PAY OVER THE POLICY PROCEEDS THE APPELLANT COURT'S DECISIONS UPHOLDING THE ILLINOIS INSURANCE CODE, AND THE USUAL COURSE OF APPELLANT PROCEEDINGS ARE ARBITRARY AND CAPRICIOUS.

Aside from the doctrinal importance of the questions presented, an additional reason to grant the petition is the dramatic impact the decision below will have on the entire Court's decision of an insurance company's executing and delivering and insurance contract and refusal to pay over the policy proceeds. The Court's decision upholding the Illinois Insurance Code, and the Usual Course of appellate proceedings.

The Appellate Court's decision, if left in place, will cast into doubt of what the Insurance Code actually meant, and what Appellate

Courts actually represent. The Appellate Court's decision in the instant case is in conflict with the appeal Court of Massachusetts, Middlesex decisions to recover from a fire loss. Frank A. Queen v. Vermont Mutual Insurance Company, 32 Mass. App. Ct. 343. The Conflict between the two Appeal Courts is an additional reason for granting certiorari. See R. Stern and E. Gressman, Supreme Court, the approach adopted by the Appellate Court of Illinois Third District will Significantly impair future attempts by Appeals Courts to provide solutions to other insurance problems. Review by the Court is essential to correct the decision by the Appellate Court of Illinois Third District.

CONCLUSION

In order to obtain uniformity in construction of constitution and to obtain equality for persons in the several states in the rights and protections secured by the Constitution, Petitioner prays this Court issue its writ of Certiorari and Accept Jurisdiction over this Cause.

Respectfully submitted,

James Pruitt
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Joliet, Illinois 60435
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APPENDICES

APPENDIX A

[FILED NOVEMBER 16, 1995]

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

NO. 3-95-0225

JAMES PRUITT,

Petitioner

Versus

NATIONAL CASUALTY INSURANCE COMPANY,

Respondent

ON APPEAL from the Circuit Court of the 12th Judicial Circuit

Will County, Illinois.

Before: GRABIEC, Circuit Judge

ORDER OF APPELLATE COURT

ORDER

The Plaintiff, James Pruitt, insured his business against the risk of fire by purchasing and insurance policy from the defendant, National Casualty Insurance Company. When the plaintiff's property was destroyed by fire, the defendant refused to pay over the policy proceeds. According to the defendant, the plaintiff intentionally set the fire and made material misrepresentations about the losses he sustained as a result of the fire. The plaintiff sued the defendant for breach of contract. After a jury trial, judgment was entered in favor of the defendant. We affirm.

The insurance policy at issue became effective in March 1992. It provided coverage for the building housing the plaintiff's business, a restaurant and lounge called "The Other Place," as well as coverage for the building's contents. In the early morning hours of April 27, 1992, the building was destroyed by fire.

At trial, the plaintiff, preceeding pro se, called two wittnesses who had been in the lounge the evening before the fire. These witnesses testified that they left the lounge between midnight and 1 a.m.. One witness testified that she returned to the parking lot around 2 a.m. and the building appeared to be empty. That witness did not attempt to enter the building to determine whether anyone was in fact there. The other witness testified that he did not return to the lounge after leaving.

The plaintiff testified that he closed the lounge around midnight and that he and his girlfriend cleaned up after closing. He testified that he and his girlfriend usually spent Sunday nights in a hotel in chicago but since he had been experiencing car problems they decided to spend the night at a local motel. After the defendant had locked the enctrances to the lounge, he and his girlfriend rode in a cab to the motel's parking lot. Instead of registering

immediately, they went to a restaurant next door for breakfast. Following breakfast, they proceeded to the motel, checking in at approximately 3 a.m.. The motel's records show that the plaintiff checked in at 3:11 a.m.

A taxi driver testified that he received a call to pick up the plaintiff and his girlfriend at the lounge at approximately 2:15 a.m.. He drove to the lounge, arriving around 2:30 a.m.. The plaintiff's girlfriend came out of the building and got into the cab. They waited approximately 15 minutes for the plaintiff to appear. When he did not, the driver sent the girlfriend in to check in the plaintiff. Several minutes after she returned, the plaintiff appeared. The driver took them to a local motel, droping them off shortly after 3 a.m..

A police officer testified that he drove past the lounge at 3:08 a.m. and noticed smoke coming from the building. He informed the dispatcher, and the fire department arrived within five minutes.

By that time, flames were visible from the rear of the

building.

Another police officer testified that he had interviewed the plaintiff following the fire.

at the interview, the plaintiff stated that he had checked into the motel prior to going to breakfast. He also claimed that he had been living in one of the apartments over the lounge and had lost furniture and other personal belongings as a result of the fire. Moreover, he claimed that he had lost approximately $1000 worth of inventory from the business.

The defendant called two fire investigation experts. each expert testified that the fire had been started when someone poured a flammable liquid on the floor of the lounge and ignited the liquid. They reached this conslusion based on the presence of holes in the floor of the lounge. According to the experts, fires burn up and out. The only way a fire would cause these kinds of holes would be if there was something that would act like a wick and hold the flame near the floor. A flammable liquid would cause that kind of reaction. Laboratory

tests for petroleum-based accelerants were negative. No tests were performed which would detect alcohol-based accelerants.

In addition, one of the experts testified that the apartments over the lounge were empty. He also testified that the business; coolers were empty. The other expert testified that the only inventory he saw was less than one full case of beer.

The defendant tendered proposed instructions for the jury, all of which were given. The plaintiff objected to three of these instructions. The first was a standard I.P.I. instruction. The other two were instructions that tracked the language of the insurance policy and explained how any damages should be computed. The Plaintiff did not offer instructions of his own.

The plaintiff, again pro se, argues first on appeal that the trial court erred in instructing the jury.

The test for determining the propriety of submitted instructions is whether, when taken as a whole, they fully and fairly apprise the jury of the relevant principles. (Eiliott v.

Koch (1990), 200 Ill. App. 3d 1, 558 N.E.2d 493.)

Non-pattern instructions should be brief, impartial and free from argument. Aieger v. Manhattan Coffee Co. (1983), 112 Ill. App. 3d 518, 445 N.E.2d 844.

After carefully reviewing the instructions given to the jury, we find that, taken as a whole, they are sufficient to inform the jury of the principles of law involved in the case. The I.P.I. instruction informed the jury that its duty was to determine the facts of the case from the evidence presented and cautioned that arguments are not evidence. It fairly and accurately stated the principles of law which governed the jury's performance. The non-pattern instructions were brief, impartial and free from argument. Therefore, we hold that the trial court did not err in instructing the jury.

The plaintiff next argues several points that are essentially attacks upon the jury's verdict for the defendant. In the related argument, he contends that the trial court erred in denying his motion for a new trial.

When testimony is conflicting, it is the jury's duty to determine the credibility of the witnesses and weigh the evidence. (Coduti v. Hellwig (1984), 127 Ill. App. 3d 279, 469 N.E.2d 220.) The jury's findings will not be overtuned on appeal unless they are against the manifest weight of the evidence. (Cosmopolitan National Bank v. Cook (1984), 103 Ill. 2d 302, 469 N.E.2d 183.) A judgment is against the manifest weight of the evidence only when the opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary or not based on the evidence. (Duffek v. Vanderhei (1980), 81 Ill. App. 3d 1078, 401 N.E.2d 1145.) A new trial may be granted only when the jury's verdict is against the manifest weight of the evicence. Mizowek v. De Franco (1976), 64 Ill. 2d 303, 356 N.E.2d 32.

In the case at bar, there were many conflicting accounts facing the jury. The plaintiff claimed that he and his girlfriend went to breakfast before checking in to the motel. The police officer who initially questioned the plaintiff testified that the

plaintiff told him that they had checked in before eating. The plaintiff claimed that he had lost furniture, personal belongings and $1,000 worth of inventory. Other witnesses testified that the building contained no furniture or personal belongings and that the inventory destroyed was minimal. In addition, there was some conflict regarding the time at which the plaintiff and his girlfriend took a cab to the motel.

It was the jury's duty to sort out these differing accounts and determine which were credible and which not. Apparently, the jury chose not to believe the plaintiff's version of events. We cannot say that this decision was unreasonable, arbitrary or not based on evidence. Consequently, we hold that the jury's verdict was not against the manifest weight of the evicdence. Moreover, we hold that the trial court properly denied the plaintiff's motion for a new trial.

The judgment of the circuit court of Will County

is affirmed.

Affirmed.

BRESLIN, J., with LYTTON and SLATER, JJ., concurring.

STATE OF ILLINOIS,)

APPELLATE COURT,) ss.

THIRD DISTRICT,)

As Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and keeper of the Records and Seal thereof, I do hereby Certify that the foregoing Appellate Court in the above-entitled cause, now of record in this office.

In Testimony Whereof, I hereunto set my hand and affix t he seal of said Appellate Court at Ottawa, this 16th day of November in the year of our Lord one thousand nine hundred and ninety-five.

/S/ Gist Fleshman

Clerk of the Appellate Court

APPENDIX B

FILED DECEMBER 4, 1995

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

NO. 3-95-0225

JAMES PRUITT,

Petitioner

Versus

NATIONAL CAULALTY INSURANCE COMPANY

Respondent

PETITION FOR REHEARING

PETITION FOR REHEARING

To The Honorable Justices of the Appellate Court of Illinois,

Third District:

Petitioner James Pruitt, Appellant

In the above entitled Case, represents that points were overlooked or misapprehended by the Court in it's determination of this Case, Namely:

The Court overlooked the settled rules of Law that A.44CJ.C.S. Insurance § 254, b. Fire insurance. Fire insurance is a personal contract with the insured, and not a contract in REM. It's purpose is not to insure property against fire, but to insure the owner of the property against loss by fire. See points and authorities V Page 3 of Appellant's brief.

B. 45 C.J.S. Insurance 456 Evidence

The insurance company has the burden of proving the existence of a binding insurance contract between the parties and the amount of permiums due thereon, and insured must

prove a defense of payment or release. The usual rules as to admissibility and weight and sufficiency of evidence apply.

Insurance 114 Necessity in General

Ill. App. 1977. In order to collect under an insurance agreement, one must have an insurable interest in the insured item. Reznick v. Home Insurance Company, 4 Ill. Dec. S25, 360 N.E. 2d 461, US ILL. App. 3d 1058 Ill. App. 1940

The insured is entitled to recover under a fire policy when he has an "insurable interest" for losses under terms of the policy not exceeding the amount for which he is insured. Beddow V. Hicks, 2 S N.E. 2d 93, 303 Ill. App. 247

Ill. App. 1942. A contract of insurance is on of "indemnity" merely and any person having an interest in property may, through an insurance contract, indemnity himself against loss by fire or other insurable casualty. LeDoux V. Dettmering, 43 N.E. 2d 862, 316 Ill.

The Appellant is entitled to recover on fire policy because hehad an insurable interest in the property which the

appellee had an insurance contract with appellant to insure personal property and building against loss by fire.

II.

The Court misaprehended the fact in finding that on or about February 13, 1992 in the city of Joliet, Will County, Illinois Appellant and Appellee entered into a written contract, a copy of which is attached to appendix for Appellant Brief. Pp A1-16

By the terms of that contract, Appellee agreed to insure a building and personal property owned by Appellant at 738-40 Collins Street, in the city of Joliet, Will County, Illinois. A copy of which is attached to appendix for Appellant's brief.

By the terms of that contract, agreed to construct abuilding and property owed by Appellant has performed all the condition on his part under the terms of the contract.

Appellee failed to fulfill the contract on his part, in that he failed to pay Appellant or make any offer which he was obligated to, by the contract that Appellant and Appellee

entered into,February 13, 1992.

Appellant has been damaged for more than the $75,000 for the building and the $50,000 for personal property that the contract was entered into, by Appellant and Appellee. Also Appellant has lost his businesses by reason of the breach.

III.

The court overlooked the settled rules of Law:

1. Insurance 560 (3) If a fire insurance company objects to the notice or proof of loss on specified ground it cannot afterward urge any other ground of objection.
2. Insurance § 1300, Denial of Liability or refusal to pay.
   A. Original - A fire insurance company denial of liability or refusal to pay constitutes a waiver of policy requirements as to notice and proof of loss.
   B. A denial of Liability on a fire insurance proof of loss where the denial is unqualified in character.

Insurance § 1261 Denial of liability or refusal to pay:

A denial of liability by an insurance company on the grounds is a waiver as to a want of, or defects in notice and proof of loss.

Insurance 559,559 (1)

Broadly stated, the rule is that, if the company denies liability for a loss, and refuses to pay it either, for that or another reason placing its refusal on a definite ground other than want of notice and proof of loss or defects in their form or substance, it waives the right to insist on the failure to give notice and make request proofs as a defense to an action on the policy, although it has been said that denial of liability is evidence of waiver rather than a waiver itself.

Trial handbood for Illinois Lawyers-Civil § 62.18. Damages for breach of contract.

The measure of damages for breach of contract is the amount which will compensate the injured person for the loss which fulfillment of the contract would have prevented or the break of it has entailed. 22 AmJar 2d. Damages § 46.

Damages § 62.20. Damages to Personal Property.

If the property is destroyed, the measure is the value just before the occurence, New York, C. S.L.R.W. V American Transit Lines, Inc. (1951) 408 Ill 336, 97 N.E. 2d 264, unless there is salvage value, in which case, such value is deducted from the value before the occurrence. I.P.I. Civil 30.14

IV.

The court overlooked the settled rule of law that insurance § 1249 - Fraud, False Swearing, Misrepresentation, or Concealment. Insurance 552-553 (2),562.3, 562.3 (1-3), 563.4, 562.4 (1).

To establish the defense of misrepresentation of proof of loss, an insurance company must demonstrate that representations made by insured were relevant, material and intentionally false.

The Appellee did not establish a preponderance of evidence the defense of fraud or misrepresentation or concealment of material facts in the proof of loss.

Insurance 544 Issues, Proof and Variance

Material allegations in the pleadings in an action of an insurance policy must be proved if but in issue. The Appellee's attorney or the court did not deliver into issues of the complaintsy and to the burden of proof. No witnesses or any evidence was introduced by the Appellee's attorney for the complaints.

In Appellant Brief Argument IV. Appellant argues that as a direct and approximate result of Appellee vexations delay in settling claim, Mohr V. Dix Mut Country Fire Insurance Company, (1986 4th District) 143 III App. 3d 998,97. Illinois Dec.831, 493. N.E. 2d .638, Appellant has been denied the use of the settlement proceeds, has been denied the interest to App. 17be earned from said settlement proceeds; and has had to incursubstantial legal expenses and court costs to bring forth this suit to recover said insurance benefits to which he is rightfully entitled, Illinois Revised Statutes, 1989, Chapter 73, paragraph 767. Insurance § 1261 "A denial of liability by an insurance company of other grounds is a waiver as to a want

of or defect in, notice and proof of loss."

Illinois Revised Statutes, 1989 Sets forth the following:

In any action by or against a company wherein is an issue the liability of a company on a policy or policies of insurance or the amount not to exceed any on of the following amounts:

A. 25% of the amount which the court or jury finds such party is entitled to recover against the company exclusive of all costs:

B. $25,000

C. The excess of the amount which the court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action.

The trial court never presented the issue of whether the insurers refusal to pay insured is vexatious or unreasonable, therefore it was not acted upon by the trial court.

15.1 Trial Handbook for Illinois Lawyers - Civil Burden of Proof, Generally - Normally,in civil cases the party having the burden of proof is required to prove his case by a preponderance of the evidence. Reivitz V. Chicago Rapid Transit Company (1927) 327 ILL 207, 158 NE 380. The test is whether one having the burden of proof has proved that his position "is the more probably true than not true." See 64.26 for a discussion of instruction on the burden of proof in civil cases.

64.26 Instructions on Burden of Proof - It is the duty of the court to instruct the jury as to the burden of proof and preponderance of the evidence. Smith V. Metropolitan Life Ins. Co. (1943) 317 Ill App 624 47 NE 2d 330. Normally , it is also the duty of the court to give instructions to guide the jury in determining the credibility of the witnesses, if requested. DesPlaines V. Winkleman (1995) 270 Ill 149, IIONE 417.

The court did not instruct the jury as to the burden of

proof and preponderance of the evidence of a breach of contract. Neither did the judge instruct the jury as to the Appellee's complaint of intentionally setting a fire or misrepresentation as claimed by the Appellee. Nor were there any witnesses introduced. The adjuster or the investigating agency hired by the Appellee did not appear in court to testify of the complaints claimed by the Appellee.

V.

The court overlooked the settled rules of post - trial motions a Common Law.

Arest of Judgement was denied, and should have been granted, because the common law records was inadequate to support the judgement and verdict for appellee.

The complaints made by the Appellee "on it's face fails to state a proper cause of action (as distinguished from a defective statement of a good cause of action) See CCP 2-1204.

Judgement notwithstanding the verdict was denied and

should have been granted, because, no evidence was introduced in the court that the Appellee did not breach the contract, according to S. Ct. Rule 133 (C). The Appellant was entitled to judgement as a matter of law, because Appellee Appellee submitted no proof on an essential element of the cause of action to support a verdict and judgement. The motion asks the court to set aside the verdict rendered by the jury, review all evidence and pray for a final judgement in favor of the Appellant.

A new trial should have been granted because, the jury verdict was contrary, to the :manifest weight of evidence."

A new trial should have been granted because, the jury verdict was unreasonable arbitrary, and unsupported by the evidence."

A new trial should have been granted because of the misconduct of the Appellee's Counsel:

1. Conduct of Appellee's Counsel was improper and resulted in undue prejudice to Appellant and to he

trial of the cause in the following specifics:

a. Appellee's Counsel in rebuttal argument made repeated references to facts not in evidence.

b. Appellee's Counsel persisted in a line of questioning concerning arson whic there was no witnesses or evidence viewed in aspect most favorable to the Appellee.

c. Appellee's Counsel used the A.T.F. agent with photographs taken by the Joliet Fire Department that did not show the cause and origin of the fire. They only showed the jury the extent of the loss and the quantities of the property in the building. They made repeated statements to the jury that they knew to be improper, and which matters had no place in the Breach of Contract Complaint.

Trial Handbook for Illinois Lawyers - Civil

Chapter 63.22 Demonstration or Reenactment of Evidence.

Counsel may not, during arguments have a party or witness demonstrate the manner in which an event occurred See motion for judgement Notwithstanding, the Verdict, Motion in Arrest of Judgement, and Motion for New Trial in Appendix for Appellant Brief pages A 54 - A 65. also see Appallant Brief, "Points and Authorities," pages 2 - 3.

VI.

The court misapprehended the fact in finding that the case at bar is a Breach of Contract case, not an ARSON case to find Appellant guilty. The Appellee refused to pay the policy proceeds. That the Appellant signed a contract which became effective in March 1992. According to the Appellee, the Appellant intentionally set the fire and made material misrepresentations about the losses he sustained as the result of the fire.

I.E.P. § 3451 - Failure to prove material allegations of pleading. There was no evidence or even one essential issue in favor of the Appellee holding the burden of proof on the

issues the Appellee refused to pay over the policy proceeds. The court should have directed the verdict. I.C.P. 3502.

I.C.P. § 3451 - Lack of evidence by Appellee.

I.C.P. § 3508 - Lack of evidence to support counter claim.

In the Circuit Court of the 12th Judicial Circuit, the Appellee did not offer proof or evidence of these complaints. The court misapprehended the fact that Appellant had a contract with the Appellee to provide insurance for his building and personal property against loss by fire. Once Appellant fulfilled his obligations of the contract, the Appellee refused to pay over the policy proceeds, not to prove what time Appellant left his business what time he arrived at the restaurant for breakfast or what time he checked into motel. The witnesses the Appellee called to the stand, made statements speculating arson, without proof of evidence or eye witnesses.

At trial, the Appellant, pro se, called two witnesses to the stand, who had not been in the lounge the evening before

the fire, but worked and assisted Appellant's business for three years. These witnesses knew as much about Appellant's business as the Appellant. There were times during the three years of business these witnesses opened and closed Appellant's businesses.

Both witnesses returned to their cars, not parked in a parking lot, because Appellant business did not have a parking lot, parked less than twenty feet of the entry into Appellant's business, they knew Appellant's businesses were closed and he was gone when they returned to their cars around 2 a.m. A usual routine is if plaintiff is leaving the business premises temporarily after closing and returns later, these witnesses will close and remain there until the Appellant returns. If the Appellant does not return, everyone leaves together.

The evening of April 26, 1992, Appellant had a birthday party in the lounge that lasted until 12:00 midnight, which left a lot of garbage to be cleaned up. Eugene Massey, the witness who did not show up in court to testify but issued a statement

that had been taken by the Appellee's investigating team previous to the trial day was motioned to be read by the Appellee's attorney to the jury. See Appellant's Brief Page 15, and R.C. 235, this witness helped clean up after the party was over, not the girlfriend. The girlfriend cleaned the restaurant after she sold out of stock around 10:00 p.m. See appendis for brief A 39 - A 45.

The Appellant's businesses were never opened on Sunday past 12:00 midnight Sunday until 4:00 p.m. Monday. Other days Appellant would open his business at 10:00 a.m. and close Monday, Tuesday, Wednesday, Thursday at 2:00 a.m. Friday and Saturday closed lounge at 3:00 a.m. and restaurant at 4:00 a.m. The reason Appellant chose to leave at 12:00 midnight every Sunday night was his only day off from 12:00 a.m. Sunday until 4:00 p.m. Monday evening. If Appellant stayed opened his friends and relatives would come by not ready to go home and knock on the doors

and windows. The only reason he called a cab and went to a local restaurant and motel is that two days prior to Appellant businesses being destroyed by fire, Appellant's car was struck and totalled by a drunk driver while parked in front of businesses.

The court misapprehended the facts in finding that testimony of the cab driver ant the police officer who drove past the lounge at 3:08 a.m. and noticed smoke coming from the building. The NIPS taxi driver testified he received a call to pick-up Appellant at approximately 2:15 a.m. arriving around 2:30 a.m. He waited approximately 15 minutes for the Appellant to appear. At 2:45 a.m. the driver sent the girlfriend for the Appellant. Several minutes after she returned, the Appellant appeared, making it approximately 3:00 a.m. before the driver left Appellant's business to drop them off at the restaurant, not the motel which would have made it approximately 3:15 a.m. The motel record indicated that Appellant checked in at 3:11 a.m., which is correct. However

Appellant and girlfriend had already spent approximately one hour at the restaurant next door to the motel prior to check in.

In reply brief of Appellant, P-13, Exhibit A which Officer Underwood advised that approximately 15 minutes prior the fire being discovered he observed a brown cab belonging to Circle Cab Co. parked in front of 738 Collins Street, Appellant's businesses, at approximately 2:45 a.m. The Nips cab driver testified that by the time he arrived at 2:30 a.m. and waited for the Appellant to come out it was approximately 3:00 a.m. The cab driver, the Appellant nor the girlfriend ever saw a Circle Cab parked in from of the businesses at any time. Neither did the police officer see NIPS Cab parked in front waiting for the Appellant to come out. The reason the officer did not see a NIPS cab parked in front of Appellant's businesses and NIPS cab did not see Circle cab parked in front of Appellant's businesses is because Appellant closed the businesses and left the premises in NIPS cab at 1:45 a m. arrived at Georgio's restaurant

approximately 2:00 a.m. The Appellant remained at the restaurant for about an hour and then checked in to the motel at 3:11 a.m. When Appellant's witnesses returned to their cars at 2:00 am. which was twenty feet from Appellant's businesses, if business was still open they would have come in. However, witnesses knew the business was closed and the Appellant was gone so they got in their cars an d left. The front of Appellant's businesses were all glass and you could see into them a block away. The NIPS cab driver stated in his testimony that he did not see any smoke at 3:00 a.m. However, if he was there between 2:45 a.m. and 3:00 a.m. he would have seen smoke like Officer Underwood. There is a discrepancy between the time the NIPS cab actually left the Appellant's businesses which was 1:45 a.m. not 2:45 a.m. The cab driver also stated he did not have a record of fares the night of the fire.

The Mayor, the liquor commissioners, the police department, the insurance agent, salesmen, friends, relatives

and most of the customers knew the Appellant lived in the building that housed his two businesses. People would come by after Appellant closed and knock on the windows and doors to buy ribs and rib tips that had been put away in the coolers to take home to heat up. That is why Appellant would leave on Sunday nights and return Monday evening with my stock, because people would not let Appellant rest if Appellant stayed there. Anytime Appellant wanted to rest Appellant would have to leave the building. The Electric, Gas, Telephone and Joliet Water Department all knew Appellant lived in the building for more than a year. Appellant did not have a lot of household furniture in the building, which Appellant did not need since all entertainment was done in the lounge. But Appellant did have a bed, two sofas, a love seat, table and chairs, refrigerator, stove, a lot of clothes and other personal items that Appellant had collected and saved most of his life. On occasion Appellant would go upstairs and rest for 4 or 5 hours, no more than that, because Appellant spent

hours a day, six days a week running his businesses. So Appellant did not have much time to spend in a house. Appellant had a bed in his office, sometimes after businesses would close, Appellant would sleep in the office until it was time to open.

How did the investigation experts expect to come to the building the next day, which was completely destroyed by the fire. The roof burned off, the second floor burned up collapsing onto the first floor burning everything. How did they expect to find furniture or anything else except four brick walls standing with no support. Everything that was loose that was burned was thrown out on the side walks by the Joliet Fire Department. There was so much rubbish on the sidewalks so people could walk on it. The remaining walls were dangerous with no support that the City of Joliet Neighborhood Services had them torn down within six days after the fire.

Sunday night, April 27, 1992, Approximately 12:30 a.m.

Eugene Massey helped the Appellant clean the lounge after the party ended. He gathered all garbage from party and from Saturday's birthday party that had been put in storage rooms. Empty beer boxes that had been left behind the bar plus three large garbage containers and placed all of them in back of the lounge near the back door to be taken out Monday evening when Appellant returns to the business. It was in that area in which the investigating experts claimed holes were burned in the floor. After he finished cleaning up and vacuuming he went into the restaurant and sat at the counter with Appellant's girlfriend while the Appellant went into the washroom to wash up and to the office which was located next to the washroom to change clothing. During that time the Appellant's girlfriend called out to say the cab had arrived. Appellant said to her, "Go on out so that the cab won't leave." Three or four minutes later she came in to the office where I was putting on my tie and said "you better hurry up or the cab is going to leave." Appellant said "O.K. go back out, I'm on my way, I have to

turn out the lights." Eugene Massey was standing inside the restaurant at the door we went out to get into the cab. He asked where we were going and Appellant said "I don't know, probably to a restaurant on the west side and have coffee and a sandwich and unwind for a while before going to the motel to rest because I am very tired from the three birthday parties and I need a lot of rest before I open on Monday evening." So he went across the street to a lounge where Martha Jean Rainey, Remy Richards and some other customers that had been at Appellant's lounge. That was about 1:45 a.m. because the lounge across the street and all bars in Joliet close at 2:00 a.m. not 3:00 a.m. as the cab driver stated. If that was true Eugene Massey would have not been able to go across the street to that lounge because it would have been closed.

VII.

The court overlooked the settled rule of the Supreme Court, Rule 366. Purpose of instructions is to convey to the

monds of the jurors the correct principles of law applicable to the evidence submitted to them. No evidences were submitted to the Jury and no witnesses testified as to the Appellant intentionally set the fire and made material misrepresentations about the losses he sustained as a result of the fire. The court errored in instructing the jury pursuant to the Appellant's counsel tendered instructions. The improper instructions and testimonies of the investigating experts who did not submit any evidence to the Jury of a witness to testify of the investigating experts who did not submit any evidence to the Jury or a witness to testify of the Appellee's pleading, directed the Jury that Appellant may have been responsible and compromised the Appellant of fair trial treatment by the Jury. The Jury was misled by improper arguments not predicated and evidence confined to the issues of the case, I.C.D. § 3553, 3554. The instructions or the testimonies were not in accord with the pleading of the case. No time during the trial, did the court direct the Appellant to prepare designated instructions, as

stated in S. Ct. Rule 239, Instructions (G). See Appellant - Brief p. 17.

VIII

The court misapprehended the fact that the Appellant's burden of proof wasproved by a preponderance of evidence. He had an insurance contract with the Appellee to insure his loss by fire, see sppendix for Appellant - Appellant's Brief A17. Appellant's business and personal properties were destroyed by fire April 27, 1992. The Appellant reported the fire as the contract required.

At trial, the witnesses that the Appellant called or the Appellant himself did not give any conflicting testimonies. Appellant told the Jury what happened. Appellant told the Jury exactly what was taking place the evening prior to the fire. Appellant told the court exactly the routines of his businesses for the past three years, but it was approximately 12:30 a.m. by the time the people left the birthday party. The Appellant and a friend cleaned the lounge before Appellant

and girlfriend left about 1:45 a.m. in a cab, (see Appendix p. A 40) because the Appellant's car was totalled by a drunk driver two nights before the fire, nothing else was unusual.

The two witnesses Appellant called gave their testimonies to the court and submitted written statements that were taken by the Appellee's investigators to the court. The Appellee's counsel had the opportunity to cross examine them for anything that would relate to his pleading. See: testimony of Jean Rainy, Report of proceedings p. 50. Written statement Appendix for Appellant, Brief A 46 - 48. Remy Richards testimony, Report of proceedings p. 54. Cross examination Report of proceedings p. 56. Written statement appendix for Appellant, Brief A 49 - 50. Eugene Massey written statement Stipulate - Report of proceedings p. 235.

The conflicting testimonies were the testimonies of the Appellaee's witnesses making statements with unsupported evidences.

The Taxi driver that testified in court, did not submit into

court any evidence material for the jury to review. In his telephone statement taken by Joe Mazzone, a fire investigator, june 16, 1992 the cab driver stated that he did not log the time that night, April 27, 1992. He stated that he thought the call came in about , 2:00, 2:35, 2:40 or "something like that." He got over to Allen Street around 2:45. He also stated that he met his wife when he was returning from the motel and she told him "the place you just picked the people up from burned to the ground." The fire department report shows that they did not get the fire under control until about 6:00 or 7:00 a.m. So here is a conflicting testimony with out evidence.

A police officer testified he drove past the lounge at 3:08 a.m. He had no written report to submit to the court for evidence. He answered only questions that he and the Appellee's counsel reviewed concerning the case during court recess.

Another police officer testified that he had interviewed the Appellant following the fire, he did not bring his report to

submit to the court for evidence. Again he answered only questions that Appellee's counsel had previously reviewed with him outside the court room.

The two fire investigating experts that the Appellee called, neither one of them submitted a written report, lab tests or anything else into court for evidence. One of the investigating experts used the photographs that were taken by the Fire Department. The investigating expert had no knowledge of these photographs because he did not direct the photographer in taking the photographs. The photographs used were not taken until the day after the fire. The photographs that were shown and discussed to Jury by the Appellee's counsel and the investigating expert that only showed the extent of loss not the cause.

If the photographer and firemen had discussed the photographs, they could have stated that the photos fairly and accurately portrayed the scene as they saw it during and immediately after the fire. Instead the A.T.F. officer and the

Appellee's counsel put on a show to the Jury with photographs that neither one had any knowledge of. See Reply brief pp. 1 - 2.

In addition, one of the experts testified that the apartments over the lounge were empty. The Appellant stated how could he expect to find anything in the apartments when the building burned to the ground and the second floor collapsed onto the first floor. The same goes for the stock. Everything that was burned or broken was thrown out onto the sidewalk.

If the original investigators that were hired by the Appellee would have come to court with their reports then there would not have been conflicting testimony. They did not have anything to report so there was no reason to testify. That left the Appellee's counsel with no one to testify. Appellee's counsel had to make phone calls to ask other witnesses to come and testify about the fire which they had little or no knowledge about. These witnesses did not have time to prepare or bring any prepared statements or evidence with

them. That is where the conflicting testimonies come in. The Appellant filed a complaint for Breach of Contract July 14, 1992, Appendix A 21, and an amended complaint September 27, 1993, Appendix A 26 - 31. Of the complaints filed. It was the burden of proof for the Appellee to come to trial and submit evidence and present witnesses to the Jury and he did not do so. Therefore, the Jury's verdict for the Appellee was improper.

In view of the matters overlooked or misrepresented by the court as previously pointed out. Petitioner, requests that rehearing be granted in this case, and that upon the rehearing, the Judgement of this court be reversed and that of trial court be remanded for a new trial or that the Appellate Court enter a finding that the Appellee, National Casualty Company, is liable for the Appellant's losses under the said policy of insurance. In respect to the subject premises, building and personal property.

Dated 12-4, 1995

James Pratt, Petitioner

APPENDEIX C

FILED DECEMBER 20, 1995

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

JAMES PRUITT

PETITIONER

VERSUS

NATIONAL CASUALTY INSURANCE COMPANY

RESPONDENT

ORDER Denying Petition For Rehearing

Be it remembered, That, to wit: On the 20th day of December, 1995, certain proceedings were had and orders made and entered of record by said Court, among which is the following, viz:

Now on this day this cause coming on for hearing upon the petition for rehearing filed by the Appellant, herin, and the Court having duly considered said petition, as well as the matters and things alleged in support thereof, and being now fully advised in the premeses;

It is ordered by the Court that said petition for rehearing be and the same is hereby overruled and denied.

Petition for Certificate of Importance is also denied.

/S/Gist Fleshman
Clerk of the Court

APPENDIX D

[FILED DECEMBER 30, 1995]

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

JAMES PRUITT

PETITIONER

VERSUS

NATIONAL CASUALTY INSURANCE COMPANY

RESPONDENT

AFFIDAVIT OF INTENT TO FILE PETITION FOR

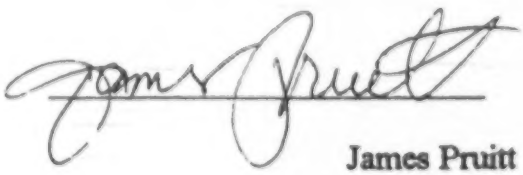
LEAVE TO APPEAL

JAMES PRUITT, on oath states:

The opinion of the appellate Court of Illinois for the Third District in "James Pruitt v. National Casualty Insurance Company," No. 3-95-0225 was rendered on November 16, 1995.

I am the Plaintiff - Appellant of record.

Plaintiff - Appellant intends in good faith to file a petition for leave to appeal to the Supreme Court of Illinois within the time provided by law.



James Pruitt

304 N. Broadway

Joliet, Illinois 60435

815-723-7586

APPENDIX E

FILED JANUARY 11, 1996

IN THE SUPREME COURT, OF THE

STATE OF ILLINOIS

NO. 80439

JAMES PRUITT,

Petitioner

Versus

NATIONAL CASUALTY INSURANCE COMPANY,

Respondent

PETITION FOR LEAVE TO APPEAL

PLAINTIFF PETITIONER, JAMES PRUITT, PURSUANT TO ILLINOIS SUPREME COURT RULE 315(a), RESPECTFULLY PETITION THIS COURT FOR LEAVE TO APPEAL FROM THE JUDGMENT OF THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT.

JURISDICTIONAL STATEMENT AND JUDGEMENT BELOW

On february 8, 1995, the Will County Circuit Court granted Defendant-Respondent, National Casualty Insurance Company a Jury Verdict against Plaintiff's Complaint which sets forth Cause of Action for Breach of Contract. James Pruitt filed a Notice to Defendant for post-trial or a new trial February 22, 1995. On March 3, 1995 an amended motion was filed. On March 6, 1995, plaintiff's post trial motion, motion for a new trial and motion for judgment notwithstanding verdict was denied. On March 27, 1995 a

Notice of Appeal was filed. True and accurate copies of motions, complaints, notices and denials is filed, e.g. as Exhibit

A 22, A 54, A 55, A 56 - 64, A 65, and A66. On November 16, 1995, the Appellate Court of the Third District, Will County, Illinois affirmed the Judgment of Trial Court of the Twelfth Judicial Circuit, Will county Illinois. A true and accurate copy of opinion is attached, PL.EX. A. P. 1-8 December 4, 1995, a Petition for Rehearing was filed in the Appellate Court. A true and Accurate copy is attached PL. EX. C. P. 9 - 19. On December 6, 1995, a Petition for Certificate of Importance was filed in the Appellate Court. On December 20, 1995, said Petition for Rehearing and Certificate of Importance was denied by the Appellate Court. A true and accurate copy is attached PL. EX. C. P. 20. On December 30, 1995 Plaintiff filed an Affidavit of Intent to file a Petition for Leave to Appeal. A true and Accurate copy is attached, PL. EX. D.P. 21.

POINTS RELIED UPON FOR REVERSAL

To the Honorable Justices of the Supreme Court of Illinois:

Plaintiff-Petitioner in the above-entitled cause represents that

Points were overlooked or misapprehended by the Court in determination of this cause, namely:

I

THE COURT MISAPPREHENDED THE FACT IN FINDING THAT EXECUTION OF THE INSURANCE CONTRACT NO. MP 022170 AND DELIVERED BY DEFENDANT TO THE PLAINTIFF BEFORE MARCH 14, 1992 CONSTITUTED THE ONLY ACT TO WHICH DEFENDANT IS OBLIGATED TO PAY PLAINTIFF FOR LOSS OF BUILDING, PERSONAL PROPERTY AND LOSS PROFITS, ATTACHED AS EXHIBIT E., P. 29 - 45 IN FACT, EXHIBIT E IS DATED MARCH 14, 1992, WELL BEFORE THE DATE PLAINTIFF HAS SUFFERED LOSS IN DIRECT VIOLATIONS AND BREACH OF SAID MULTI-PERIL INSURANCE POLICY AND THE ILLINOIS REVISED STATUTES, 1989, CHAPTER 73, PARAGRAPH 767.

Plaintiff, after execution of Exhibit E., March 14, 1992

and after loss of building and loss of personal property April 27, 1992, provided defendant with all documentation that was required by the insurance contract to date, defendant has unreasonably and vexatiously denied said claim and unreasonably and vexatiously delayed in settling said claim and caused plaintiff to lose two businesses, loss of property and loss of profit. The violations of which defendant pleaded are by no means limited for denial to execution of Exhibit E

The Judgment of the Appellate Court of Illinois (Third District) Conflicts with the decision of the Appellate Court of the First District, Third Division in Latex Glove Co., Inc. V Alfred J. Gruen, 146 IL APP. 3d 868, 100 ILL. Dec.488 (1st Dist.1986). The Appellate Court of the First District held that a Complaint which sets forth Cause of Action for Breach of Contract must allege facts sufficient to indicate offer, acceptance and consideration, as well as Plaintiff's performance of all provisions.

The Third District Appellate Court is incompatible with

this Court and Created a conflict of interest between the insurer and the insured. Therefore, regardless, of the conflicts in the testimonies this Court places upon the witnesses at trial, that gave this Court reasons to affirm the decision of the Trial Court, ExhibitA attached to the petition, the defendant is guilty of Breach of Contract executed March 14, 1992 that gives Plaintiff the right to any recovery.

II

IN AFFIRMING THE DECISION OF THE TRIAL COURT, THE APPELLATE COURT HAS MISAPPLIED THE LAWS GOVERNING DAMAGES FOR LOSS OF BUILDING, PERSONAL PROPERTY. LOSS OF PROFITS DUE TO BREACH OF CONTRACT.

While the Latex Glove Co. Enc. decision holds that a prayer for damages against Alfred J. Gruen, the Appellate Court of the First District held that seeking damages for loss of profits due to Breach of Contract must allege facts which show that allegedly lost profits can be proved with reasonable

certainty, were proximately caused by wrongful act of defendant, and were reasonable within contemplation of parties at the time Contract was formed. The Appellate Court of the Third District overlooked the settled rules of law of the State of Illinois affirming the decision of the Trial Court allowing an insurance company to execute insurance contracts and refuse to pay for loss for any reason they want.

The Plaintiff's businesses, building and personal property was completely destroyed by fire, so there is no questions of allegedly lost profits, building and personal property being proved with reasonable certainty.

III

THE APPELLATE COURT HAS MISPLACED THE BURDEN OF PROOF IN THE CAUSE IN REQUIRING THE PLAINTIFF TO PROVE ESSENTIAL ELEMENTS OF PLAINTIFF'S CASE, WHEN DEFENDANT PROOF ITSELF FAILED TO ESTABLISH THE SAME.

The judgement of the Appellate Court of Illinois (Third

District) conflicts with the trial handbook for Illinois Lawyers -CIVIL, Ch. 15.1 which states - Normally, in civil cases, the party having the burden of proof is required to prove his case by the preponderance of the evidence. In James Pruitt vs. National Casualty Insurance Co. the decision holds that a prayer for punitive damages against an insurer does not inherently create a conflict of interest between the insurer and the insured, the Third District's decision is to the contrary because the decision allows the insured to execute contracts and not pay claims based on their own discretion, regardless to evidence, proof or witness. In James Pruitt Vs. National Casualty Insurance Co. the defendant refused to pay over the policy proceeds, because of discretions that plaintiff intentionally set the fire and made material misrepresentations about the losses he sustained as a result of the fire. The Plaintiff sued the Defendant for Breach of Contract because the Defendant did not present any proof, witness or evident to deny the claim.

IV

IN AFFIRMING THE DECISION OF THE TRIAL COURT, THE APPELLATE COURT HAS MISAPPLIED THE LAWS GOVERNING THE POWER OF A TRIAL JUDGE TO ENTER JUDGMENT, NOTWITHSTANDING THE VERDICT OF THE JURY AND GRANT A NEW TRIAL.

The defendants pleadings were that the Plaintiff intentionally set the fire and made material misrepresentations about the losses he sustained as a result of the fire. No witness testified at the trial that the fire was intentionally set. Laboratory tests for petroleum-based accelerants were negative. The only evidence adduced at the trial was that Plaintiff's building and personally property was destroyed by fire. The Joliet Fire Department and the Bureau of Alcohol, Tobacco and Firearms only made discretion about the fire. Either one adduced any evidence at trial that the fire was intentionally set. The defendant plead that Plaintiff made material misrepresentations about the losses he sustained as a

result of the fire. This defense was not presented to the jury, nor were any jury instructions regarding this defense tendered.

The Appellate Court affirming the decision of the Trial Court. Conflicts with the rule of the Illinios Civil practice, Volume III (14.39).

All of the evidence adduce at the trial by the Plaintiff was so overwhelmingly favor that no verdict for the defendant could ever stand. Plaintiff's Complaint was that defendant violated and breached the subject multi-peril insurance policy. Plaintiff submitted the insurance policy to the Court for evidence and submitted a Sworn Statement in proof of loss to the Court for evidence. The defendant submitted no proof on an essential element of the Cause of Action. Therefore, the post-trial motion that prayed for judgment notwithstanding the verdict and a new trial was proper.

V

IN AFFIRMING THE DECISION OF THE TRIAL COURT, THE APPELLATE COURT HAS MISAPPLIED

THE LAW GOVERNING THE POWER OF A TRIAL JUDGE TO ENTER JUDGMENT OF WHETHER AN INSURER'S REFUSAL TO PAY IS VEXATIOUS OR UNREASONABLE.

The judgment of the Appellate Court of Illinois (Third District) conflicts with the decision of the Fifth District in Kohlmeier V. Shelter Insurance Company, 170 ILL. APP. 30 643, 121 ILL. Dec 288, 525, NE 20 94 (5th Dist. 1988). The decision holds that the determination of whether an insurer's refusal to pay is vexatious or unreasonable is for the Trial Court, not the jury. In the Amended Complaint filed in the Circuit Court, September 27, 1993, EX. H, Count II VEXATIOUS DENIAL/DELAY. The Trial Judge never mentioned anything of Plaintiff's complaints to the court in order to make determinations. Therefore, the Appellate Court utterly failed to review the conditional ruling of the Trial Court of whether an insurer's refusal to pay is vexatious or unreasonable.

STATEMENT OF FACTS

Appellant was for three years, from 1989 - 1992, a business owner duly organized and existed under the laws of the State of Illinois. The Plaintiff owned and operated a restaurant and lounge under the name of "The Other Place" upon the premises and building located at 738 - 740 Collins Street, Joliet, Will County, Illinois.

The Plaintiff maintained and had in effect a special multi-peril insurance policy which on February 13, 1992 approximately 3:30 p.m. at Appellant's business, David McElwee, Agent from O'Dell and Watham Insurance Agency Inc. sat together and executed a contract.

On March 14, 1992, Defendant, National Casualty Insurance Company executed and delivered to Plaintiff his insurance policy, No. MP 002 170. Under the terms, Defendant insured Plaintiff against loss or damages by fire to the premises described in the policy in the amount of $75,000 for the building and $50,000 for personal property of the

for the term of March 14, 1992 until March 14, 1993. A copy of the policy is attached, PL. EX. F., P. 38.

On October 28, 1992, six months later the defendant denied and rejected plaintiff's claim for fire loss and property damage for the following reasons:

A. Intentionally setting or procuring the setting of the fire in question.

At the trial two fire investigation experts testified that the fire had been started when someone poured flammable liquid on the floor and ignited the liquid. Laboratory tests were negative. No witness was called at the trial to testify and no other evidence or proof was submitted to the Court for this cause.

B. Falsely Swearing in Plaintiff's examination under oath.

The examination under Oath was not admitted into evidence and this defense was not presented to the jury, nor were any jury instructions regarding this defense tendered.

C. Lack of an insurable interest in the property (building and contents) at the time of the loss. A true and accurate copy of defendant's pleadings is attached as Exhibit I, p. 46-48.

The issue of Plaintiff's Insurable Interest in the property was not presented to the jury nor were any jury instructions regarding this defense tendered.

No part of the $75,000 for the building nor the $50,000 for Plaintiff's personal property, the amount of the insurance payable under the terms of the policy in case of loss, has been paid to the Plaintiff by the Defendant.

As a direct and proximate result of said vexation denied by the Defendant, Plaintiff has lost his businesses, has been denied the use of the settlement proceeds, has been denied the interest earned from said settlement proceeds, and has had to incur substantial expense to bring forth this suit to recover said insurance benefits to which he is entitled according to the Illinois Revised Statutes.

On July 17,1993, Plaintiff proceeded to recover loss of

businesses, loss of building and loss of personal property and extended loss of business profit by the wrongful denial of insurance claim, by filing a complaint for Breach of Contract in the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois. See PL. EX.G., P. 39 and PL. EX. H., 40 - 45.

ARGUMENT

The Supreme Court should take this case because this case involved points that were overlooked and misapprehended by the Appellate Court of the Third District in its determination of this cause. The points that are involved in the case are of such importance that they should be decided by the Supreme Court.

I

THE APPELLATE COURT FAILED TO EXAMINE ADDUCED EVIDENCE AT TRIAL THAT GAVE THE TRIAL COURT REASONS TO DENY PLAINTIFF'S MOTION FOR JUDGMENT NOTWITHSTANDING

VERDICT / NEW TRIAL WHERE THE DEFENDANT PRESENTED NO PROOF, NO EVIDENCE, NO WITNESS TO THE PLEADINGS AND LABORATORY TESTS FOR ACCELERANTS WERE NEGATIVE.

The Trial Court improperly denied plaintiff's post-trial motion for judgment notwithstanding verdict/new trial where the defendant submitted no evidence, no proof, and no witnesses to the pleadings, that the appellate court affirmed the decision of the Trial Court misapplied the laws governing post-trial motion for judgment adduced at trial that gave the Trial Court reasons to deny Plaintiff's motion for judgment notwithstanding verdict/new trial where there was no proof or evidence and no witnesses to the pleadings of defendant. The reviewing court should have set aside a jury determination. The motion for N.O.V. and New Trial was addressed to the Trial Court's discretion. A clear abuse of discretion affirmatively appears on the record and the reviewing court should have set aside a jury determination and examined

whether the evidence adduced at trial supported the defendant's affirmative pleadings.

The verdict for the Defendant was not in accord with the pleadings evidence or findings. Therefore, the evidence viewed in aspect was not favorable to the Defendant. The evidence Plaintiff submitted to the trial court was preponderance of evidence and the complaint of Plaintiff clearly stated as a Cause of Action. Exhibit E and Exhibit F is of preponderance of evidence of Plaintiff complaint. The defendant had a personal contract with the Plaintiff and not a contract in REM, its purpose being not to insure property against fire, but to insure the owner of the property against loss by fire, Insurance 254.

The post trial motion should have been granted because the motion for judgment notwithstanding the verdict essential, that the evidence was not in accord with the pleadings, or findings, and it was legally insufficient as required by the Code of Civil Procedure. A new trial should have been granted,

because the trial judge or the tendered instructions did not fully and fairly inform the Jury as to the differing burdens of proof according to S. CT Rule 239, Instructions (G), S. CT Rule 366 Note 657, andI llinois Civil Practice 3553 and 3554.

In the case at bar, the Trial Courts denial of Plaintiff's motion for N.O.V. and New Trial was completely abusive and was not proper in light of the evidence presented to the jury. The Appellate court should have disturbed the trial court's ruling, because the evidence adduced at Trial did not prove the defendant's affirmative pleadings and proved that Plaintiff's complaint breach of contract was true.

ARGUMENT

II

THE TRIAL COURT FAILED TO DETERMINE WHETHER THE INSURER REFUSED TO PAY IS VEXATIOUS OR UNREASONABLE. THE APPELLATE COURT AFFIRMED. THE APPELLATE COURT EXAMINE NOT WHETHER THE EVIDENCE COULD

HAVE SUPPORTED A VERDICT FOR THE DEFENDANT, BUT FAIL TO EXAMINE WHETHER A CONTRARY VERDICT IS CLEARLY EVIDENCE. LIABILITY UNDER THE INSURANCE POLICY NUMBER MP022170 WAS ESTABLISHED WHEN IT WAS EXECUTED AND DELIVERED TO PLAINTIFF MARCH 14, 1992. THE APPELLATE COURT FAILED TO REVIEW THE TRIAL COURT FINDING UNDER AN ABUSE OF DISCRETION STANDARD WHERE THE TRIAL COURT IMPROPERLY DENIED PLAINTIFF'S MOTION FOR NOTWITHSTANDING VERDICT/NEW TRIAL.

The Trial Court should have determined whether an insurer's refusal to pay is vexatious or unreasonable. Kohlmeier V. Shelter Insurance Company, 170 Ill. App. 3 d 643, 121 Ill. Dec. 288, 525,NE 2d 94(5th dist. 1988). The Appellate Court Affirming the decision of the Trial Court. Conflicts with the rule of the Illinois Civil Practice, Volume III

(14.39). Plaintiff submitted the insurance policy to the Court for evidence and submitted a Sworn Statement in proof of loss to the Court for evidence. The evidence adduce at the trial by the Plaintiff was so overwhelmingly favor that no verdict for the defendant could ever stand. The pleadings of defendant was that the Plaintiff intentionally set or procured the setting of the fire in question and made false misrepresentations about the fire. Another one of the Defendant;s affirmatively plead was that Plaintiff had no insurable interest in the subject property. These issues were never brought up at trial and discussed to the jury. Nor were any jury instructions regarding these pleadings tendered. Although to established the defense of misrepresentation of proof of loss, an insurance company must demonstrate that representations made by insured were relevant, material, and intentionally false Insurance 1249. The Appellee did not establish the defense of fraud, misrepresentation or concealment of material fact in the proof of loss. Material allegations in the pleadings in any action on

an insurance policy must be proved if put in issue Insurance 544 Issues, Proof and Variance. The evidence adduced at trial clearly did not establish defendant's affirmatively pleadings, EX.I, p. 46-48. As the record reveal, no sufficient evidence existed for the jury to return a verdict in defendant's favor. The Appellate Court should have examined whether the evidence adduced at trial supported the Defendant's affirmatively pleadings for the jury to return a verdict in Defendant's favor. The test is whether a contrary verdict is clearly evidence. Johnson V. Chicago Transit Authority, 248 ILL. App. 3d 91, 287, Ill. Dec 842, 618 NE 2d 433 (1st Dist. 1993). No review of the records indicates that defense counsel's argument was based solely upon the defendant's pleadings. EX.I, P. 46 - 48 or no evidence adduced at trial. Therefore, the issues were an abuse of discretions.

The Illinois Revised Statues, 1989, Chapter 73, paragraph 767 provide iteralia:

In any action by or against a company where in as an issue, the liability of a company on a policy or policies of insurance or the amount of the loss payable there under or for an unreasonable delay in settling a claim; and it appears to the court that such action or delay is vexatious and unreasonable, the court may allow as part of the taxable costs in the action reasonable attorney fees, other costs, plus an amount not to exceed any one of the following amounts:

a. 25% of the amount which the court or jury finds such party is entitled to recover against the company exclusive of all costs;

b. $25,000.00

c. The excess of the amount which the court or jury finds such party is entitle to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action.

ARGUMENT

III

THE JURY SHOULD HAVE VOTED FOR PLAINTIFF, BECAUSE, DEFENDANT NATIONAL CASUALTY INSURANCE COMPANY VIOLATED AND BREACHED THE SUBJECT MULTI-PERIL INSURANCE POLICY EXECUTED AND DELIVERED TO PLAINTIFF MARCH 14, 1992

The defendant violated and breached the subject multi-peril insurance policy by unreasonably refusing to pay for loss of building and personal property. A denial of liability by an insurance company on the grounds is a waivery as to a want of, or defect in notice and proof of loss Insurance 1261 Denial of Liability of Refusal to Pay. The defendant submitted no proof on an essential element of the Cause of Action.

Broadly stated, if the company denies liability for a loss and refuses to pay if either, for that or another person placing its refusal on a definite ground other than want of notice

and proof of loss and defects in their forms or substance, it waves the right to insist on the failure to give notice and make request proofs as a defense to an action on policy, Insurance 559, 559 (1). The pleadings made by the defendant on its face fail to state a proper cause of action, (as distinguished from a defective statement of a good cause of action, CCP 2-1204, P.12

In Plaintiff's complaint filed July 14, 1992, in Circuit Court of the Twelfth Judicial Circuit, for Breach of Contract, Amended Complaint, September 27, 1993, Plaintiff sued the Defendant for Breach of Contract because the Defendant did not present any proof, witness, or evident to deny the claim. Mohr V. Dix Mut. Country Fire Ins. Co. 143 ILL. App 3 d 998, 97 ILL. Dec 831,493 NE 2d 638 (4th Dist. 1986) Plaintiff pays for judgment against National Casualty Company, defendant for judgment, in the sum of $75,000 for the building, $50,000 for personal property and $2,000 per week for net lost business profit from August 5, 1993 and

thereafter, plus reasonable attorney's fees, plus cost of suit, plus , an amount not to exceed one of the following:

1. 25% of the amount which the Court or Jury finds such party is entitle to recover against the company, exclusive of all costs;

2. $25,000;

3. the excess of the amount which the Court or Jury finds such party is entitled to recover exclusive of all costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to actions. A true and accurate copy of Plaintiff's COMPLAINT is Attached as Exhibit H, P. 40 - 45.

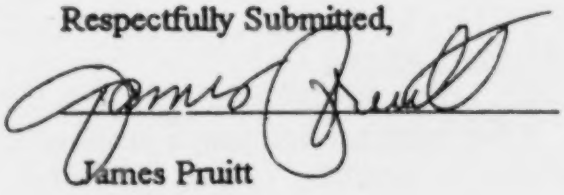
A fire insurance company's denial of liability or refusal to pay constitutes a waiver of policy requirements as to notice and proof of loss Insurance 1300. A denial of liability on a fire insurance policy will constitute a waiver of notice and proof of loss where the denial is unqualified in character.

The measure of damages, for Breach of Contract is the amount which will compensate the injury person for the loss which fulfillment of the Contract would have prevented the Breach if it has entailed, Trial Handbook for Illinois Lawyer - Civil 62.18

CONCLUSIONS

Wherefore, James Pruitt, Plaintiff-Petitioner prays for the Supreme Court to take this case because this case involved points that were overlooked and misapprehended by the Appellate Court of the Third District in its determination of this cause and prays that this Court provides Plaintiff with such relief as it may deem proper.

Respectfully Submitted,



James Pruitt

304 Broadway

Joliet, Illinois 60435

(815) 723-7586

APPENDIX F

FILED APRIL 3, 1996

IN THE SUPREME COURT OF THE

STATE OF ILLINOIS

NO. 80439

James Pruitt

Petitioner

Versus

National Casualty Insurance Company

Respondent

ORDER Denying Petition for Leave to Appeal

No. 80439 - James Pruitt, petitioner, v. National Casualty Insurance Company, respondent. Leave to appeal, Appellate

The Supreme Court today DENIED the petition for leave Court, Third District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 25, 1996.

APPENDIX G

FILED JULY 14, 1993

IN THE CIRCUIT COURT OF THE

TWELFTH JUDICIAL CIRCUIT

WILL COUNTY, ILLINOIS

NO. 93-L-8851

James Pruitt,

Petitioner

versus

National Casualty Insurance Company,

Respondent

PETITIONER COMPLAINT AND AMENDED COMPLAINT

THIS CAUSE IS BEFORE THE CIRCUIT COURT of the CIRCUIT COURT of the TWELFTH JUDICIAL CIRCUIT WILL COUNTY, ILLINOIS, upon the conclusion of a Jury trial, February 6, 1995 and Commenced on February 8, 1995 The Court heard the testimony of numerous witnesses and had before it a number of documents and personnel records to

examine. The Court did not advise the Jury of the nature of the case, nor did it consider all the evidence and submit it to the Jury to make a decision on the following findings of fact and consideration of law.'

Wherefore, James Pruitt, Plaintiff, prays that the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois will enter the Post Trial Motion for Judgment Notwithstanding Verdict/nNew Trial, and prays for judgment against National Casualty Compaqny in the sum of $75,000 for damages to the subject building, $50,000 for damages to his personal property and $2,000 for weekly lost net business profit from August 8, a993 and each week thereafter and such other relief as this Court may deem proper.

Respectfully Submitted,

James Pruitt
304 Boradway
Joliet, Illinois 60435
815-723-7586

FINDING OF FACT

COMPLAINT

See Attached Pages

APPENDIX H

MENDED COMPLAINT

FILED SEPTEMBER 27, 1993

See Attached Pages

COMPLAINT

Suing For Breach Of Contract

A. Designated Premises: 738 Collins St., Joliet, Illinois - Restaurant & Tavern. Property Covered: Building $75,000.00 Limits of Liability. General Building form MPOO1O Section1.

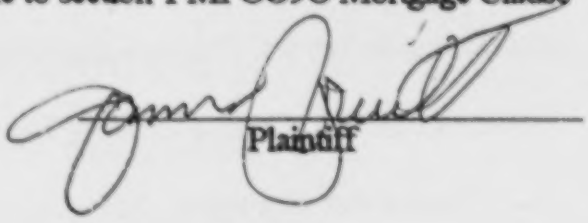
B. Designated Premises: 738 Coll ns St., Joliet, Illinois. Restaurant & Tavern. P)property Covered: Personal Property of Insured. $50,000.00 Limit of Liability. General Personal Property form MPOO12 Section 1

Suing for Damages Caused To Business

$2,000.00 per week for damages caused to The Other Place Bar-B-Q and Lounge business since the presentation and acceptance of the proof of loss. Special Multi-Peril Policy Conditions and definitions MPOO9O, Section 1, Company options. The Company did not give notice within thirty (30) days after it had received a signed sworn statement of loss of the option to take all or any of the property damaged at an agreed value or to repair, rebuild or replace it with equivalent property.

Suing The Company For Denying The Claim On Insufficient Evidence

Conditions Applicable to section 1 MPOO9O Mortgage Clause



Plaintiff

CERTIFICATION

I hereby certify, under penalty of perjury, that all facts set forth in this complaint are true and correct, except those facts stated upon information and belief, and as to those facts, I believe them to be true.

_____

Plaintiff

_____

Notary Public

AMENDED COMPLAINT

COUNT I

DECLARATORY JUDGMENT

Now comes the plaintiff, JAMES PRUITT, by and through his attorneys, WRIGHT & BABCOCK, LTS., and for Count I of his Complaint against the defendant, NATIONAL CASUALTY COMPANY, states as follows:

1. The plaintiff resides in Joliet, Will County, Illinois, and the defendant,NATIONAL CASUALTY COMPANY, is a registered Illinois insurance company which does business in Will County, Illinois.

2. On April 27, 1992, the plaintiff, JAMES PRUITT, owned and operated a restaurant and lounge under the nameof "The Other Place" upon the premises and building located at 738-740 Collins Street, Joliet, Will County, Illinois, further plaintiff possessed liquor licenses in his name for said business issued by the State of Illinois and the City of Joliet.

3. On April 27, 1992, there was in effect an office

lease for the subject premises and building located at 738 - 740 Collins Street, Joliet, Illinois with the plaintiff, JAMES PRUITT, as lessee and Roberto Olivas as lessor, copy attached hereto as Exhibit A.

4. That the plaintiff owned and operated the restaurant and lounge upon the subject premises and building which also contained apartments on the second floor where the plaintiff maintained his personal residence on April 27, 1992.

5. On April 27, 1992, the plaintiff maintained and had in effect a special multi-peril insurance policy with property coverage for the subject building in the sum of $75,000.00 and personal property in the sum of $50,000.00.

6. On April 27, 1992, a fire occurred upon the premises and building of the subject property thereby destroying said building, plaintiff's personal property and plaintiff's business.

7. The plaintiff, JAMES PRUITT, promptly proceeded to file a claim with the defendant, NATIONAL CASUALTY

COMPANY, and submitted a Sworn Statement In Proof Of Loss,

8. On October 28, 1992, the defendant, NATIONAL CASUALTY COMPANY, denied and rejected plaintiff's claim for fire loss and property damage for the following reasons:

A. Intentionally setting or procuring the setting of the fire in question, and,

B. Falsely swearing in plaintiffs examination under oath , and,

C. Lack of an insurable interest in the property (building and contents) at the time of loss.

9. As a result of the fire damage to his business and the subject building, the plaintiff has incurred substantial loss of business, loss of profit and loss of property, and, further, that plaintiff has suffered further and extended loss of business profit in the sum of $2,000 per week by the wrongful denial of his insurance claim since he has not received the insurance

proceeds which are necessary for plaintiff to rebuild the subject building and to restore the operation of his business.

10. It is the position of the plaintiff, JAMES PRUITT, that he has a proper claim under said insurance policy for property loss for the subject building and for his personal property in respect to the occurrence of April 27, 1992 and that the defendant's denial of the insurance coverage is unfounded.

11. That an actual controversy exists between the parties hereto.

WHEREFORE, for Court I of his Complaint, the plaintiff, JAMES PRUITT, prays as follows:

A. That the court declare the rights and liabilities of the parties under the policy of insurance aforementioned.

B. That the court enter a finding that the defendant, NATIONAL CASUALTY COMPANY, is liable for plaintiff's losses under the said policy of insurance in respect to the subject premises, building and personal property.

C. That the court enter a finding that the defendant,

NATIONAL CASUALTY COMPANY, in the sum of $75,000.00 for loss of the subject building, $50,000.00 for loss of the plaintiff's personal property and lost business weekly net profit in the sum of $2,000.00 for each week from August 5, 1992 until the final decision of the court.

D. That this court provide the plaintiff with such relief as it may deem proper.

COUNT II

VEXATIOUS DENIAL/DELAY

Now comes JAMES PRUITT, plaintiff, by and through his attorney, WRIGHT & BABCOCK, LTD., and for Count II of his Complaint against NATIONAL CASUALTY COMPANY, defendant, states as follows:

1 - 11 Plaintiff states and realleges paragraph 1 through 11 of Count I of his Complaint as and for paragraphs 1 through 11 of Count II of his complaint.

12. With disregard for the documentation provided by JAMES PRUITT, plaintiff, to date, NATIONAL

CASUALTY COMPANY, defendant, has unreasonably and vexatiously denied said claim and unreasonably and vexatiously delayed in settling said claim for property loss in direct violation and breach of said multi - peril insurance policy and the Illinois Revised Statutes.

13. That as a direct and proximate result of said vexatious delay by NATIONAL CASUALTY COMPANY, JAMES PRUITT has been denied the use of the settlement proceeds, had been denied the interest to be earned from said settlement proceeds, and has had to incur substantial legal expenses and court costs to bring forth this suit to recover said insurance benefits to which he is rightfully entitled.

14. That the Illinois Revised Statutes, 1989, Chapter 73, Paragraph 767, provides, inter alia:

> In any action by or against a company wherein is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable

delay in settling a claim, and it appears to the Court that such action or delay is vexatious and unreasonable, the Court may allow as part of the taxable costs, plus an amount not to exceed any one of the following amounts:

a. 25% of the amount which the Court or Jury finds such party is entitled to recover against the company, exclusive of all costs;

b. $25,000.00;

c. The excess of the amount which the Court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the action.

WHEREFORE, for Count II of his complaint, the plaintiff, JAMES PRUITT, prays for judgment against NATIONAL CASUALTY COMPANY, defendant, as follows:

A. For a judgment in the sum of $75,000.00 for the building, $50,000.00 for personal property and $2,000.00 per week for net lost business profit from August 5, 1993 and thereafter, plus,

B. Reasonable attorneys fees, plus,

C. Costs of suit, plus,

D. An amount not to exceed one of the following:

1. 25% of the amount which the Court or jury finds such party is entitled to recover against the company, exclusive of all costs;

2. $25,000.00

3. The excess of the amount which the Court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action.

E. Such other relief as this Court may deem proper.

COUNT III

BREACH OF CONTRACT

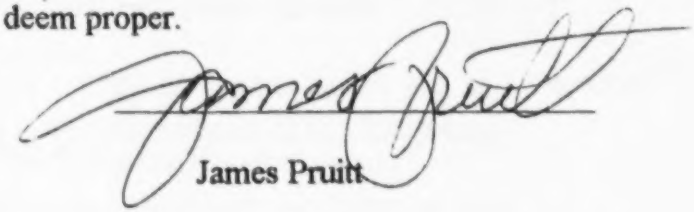
Now comes JAMES PRUITT, plaintiff, and for Count III of his Complaint against NATIONAL CASUALTY COMPANY, defendant, states as follows:

1 - 11. Plaintiff states and realleges paragraphs 1 through 11 of his Complaint as and for paragraphs 1 through 11 of Count III of his Complaint.

12. that NATIONAL CASUALTY COMPANY defendant, in violation and breach of the subject multi-peril insurance policy with JAMES PRUITT, plaintiff, has now denied overage with disregard for JAMES PRUITT, plaintiff, having met the policy criteria for the subject property damage coverage.

WHEREFORE, JAMES PRUITT, plaintiff, for COUNT III

of his Complaint prays for judgment against NATIONAL CASUALTY COMPANY in the sum of $75,000 for damage to the subject building, $50,000 for damage to his personal property and $2,000.--for weekly lost net business profit from August 8, 1993 and each week thereafter and such other relief as this Court may deem proper.



James Pruitt

James Pruitt

304 N. Broadway

Joliet, Illinois 60435

(815) 723-7586

APPENDIX I

FILED OCTOBER 28, 1992

RESPONDENT'S PLEADINGS

Claim No. 212142-74

James Pruitt, d/b/a THE OTHER PLACE

Policy No. MP022170

Date of Loss 4-27-92

See Attached Pages

Dear Mr. Pruitt:

National Casualty Company hereby rejected and returns to you the instrument purported to be a Sworn Statement in Proof of Loss rendered by you to the undersigned insurance company in connection with an alleged loss caused by fire on April 27, 1992.

The policy of insurance upon which your claim is made contains the following provisions:

Concealment or Fraud.

This policy is void if any insured has intentionally concealed or misrepresented any material fact or circumstance relating to his insurance.

This company shall not be liable for loss by fire or other perils insured against in this policy caused directly or indirectly, by: neglect of the insured to use all reasonable means to save and preserve the property at and after a loss.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto, this company shall not be liable for loss occurring:

(a) while the hazard is increased by any means within the control or knowledge of the insured;

We also deny any and all liability for your violation of the following warranty contained in your Sworn Statement in Proof of Loss:

> Said loss was not caused by design or procurement on the part of the insured or this affiant; nothing had been done by or with the privity or consent of the insured or this affiant to violate the conditions of the policy or render it void...

You have violated the aforementioned terms and conditions of the policy of insurance, the warranty of the Sworn Statement in Proof of Loss and the public policy of the State of Illinois by either intentionally setting or procuring the setting of the fire in question and by falsely swearing in your examination

under oath.

We also deny any and all liability to you for your lack of an insurable interest in the property at the time of loss.

You are hereby notified that the above-noted policy of insurance also contains the following provision:

SUIT. No suit or action on this policy for the recovery equity unless all requirements of this policy shall have been completed with, and unless commenced within twelve (12) months nest after inception of loss.

Section 9.19.80(b) (8) (c) of the Rules and Regulations of the Illinois Department of Insurance requires that our company advise you that the above-noted time period to bring suit has been tolled from August 11, 1992 until the date of this notice. This time period has been tolled 78 days. You have until July 16, 1993 to comply with this provision.

Neither this rejection of your purported Sworn Statement in Proof of Loss, nor this denial of liability is to be construed as a waiver of any of the rights of National Casualty Company

under its policy of insurance number MP 022170, nor is it our purpose by this letter to waive any additional defenses which further investigation or discovery procedures, if suit is instituted, may reveal.

Part 919 of the Rules of the Illinois Department of Insurance requires that our company advise you that if you wish to take this matter up with the Illinois Department of Insurance, it maintains a Consumer Division in Chicago at 100 West Randolph Street, Chicago, Illinois 60601 and in Springfield at 320 West Washington Street, Springfield, Illinois 62767.

Very truly yours,

/s/ Shirlee Blount

Shirlee Blount

Sr. Claims Examiner

APPENDIX J

FILED FEBRUARY 22, 1995

AMENDED MARCH 3, 1995

IN THE CIRCUIT COURT OF THE

TWELFTH JUDICIAL CIRCUIT WILL COUNTY

ILLINOIS

NO. 93-L 8851

James Pruitt

Petitioner Versus

National Casualty Insurance Company,

Respondent

POST TRIAL MOTION for Judgment Notwithstanding Verdict and For a New Trial

Petitioner, for this motion requests that this court reinstate the Cause of Action in the above referenced matter and that a Status date be set to reappear before this court for a New Trial because the Respondent did not prove the reason to refuse to pay over the policy proceeds. The Respondent

nor his witnesses furnished information to the jury for such verdict.

1) On January 9, 1995, on the courts own motion case was reset to Jury status trial call . Cause was set for status 2-6-95 at 9:30 a.m. Judge Grabiec, 1-18-95

status call case scheduled for 2-3-95, at 1:35 p.m..

2) On February 6, 1995, trial began with a witness called to the stand to testify for the plaintiff bought

the property from, testified that there was no contract he had with the intent to redeem his property back.

David McElwee (agent from O'Dell & Wathan Insurance Agency Inc.) testified that he sold the plaintiff the insurance before February 26, 1992. The policy did not go into effect until March 14, 1992, because of the previous policy ending date.

Kenneth Alexander (Inspector from Joliet Neighborhood Services) testified as to the condition of the building when

plaintiff bought the property to open the lounge and Bar-b-que restaurant. He verified that the building was to be torn down by the City of Joliet, and plaintiff had to rebuild the building up to the city code.

Martha Jean Rainy testified that she worked for plaintiff for two years ending when the business was destroyed by fire. She testified that April 26, 1992 on the night of the fire, she left about 1:00 a.m. and went across the street to another bar, leaving her car parked in front of the plaintiff's business (named "The Other Place") and when she returned to her car about 2:00 a.m. the plaintiff's business was closed and he was gone.

Remy Richards testified that he was a regular customer of the plaintiff's business which sometimes he did pick up stock for the business. He testified that he was at the plaintiff's business the night of April 26, 1992 (the night of the fire) and left at about 1:00 a.m. He was across the street with some friends.

He left his car parked by plaintiff's business. He returned to his car at 2:00 a.m. and plaintiff business was closed and he was gone.

Arthur Baker testified that he was a regular customer of the plaintiff, and he never observed any financial problems or any other problems of the business.

Eugene Massey did not show up to testify but, a statement had been taken by the defendant investigating team, previous to the trial date. It was motioned to be read to the jury. In his statement he stated that he helped the plaintiff clean the business the night of April 26, 1992 (the night of the fire) he at around 1:30 or 1:45 a.m., he joined the others across the street. He left his car parked in front of the business till around 2:00 am. and the plaintiff was gone. He testified that the business was closed at this time.

Of the essential requirement to the existence burden of proof required, the plaintiff proved his case by a preponderance of evidence. The burden of proof has proved that the plaintiff's

position is more probably true than not true.

The defendant had a personal contract with the plaintiff and not a contract in REM, its purpose being not to insure property against fire, but to insure the owner of the property against loss by fire. See Fire Insurance 254. Plaintiff had Insurance before the fire on April 27, 1992 and after the fire. That is the Burden of Proof in facts and evidence is clear.

The defendant fail to provide evidence essential to the case. Their advisors, frontier adjusters, Roy Christensen who the Insurance Company had as the Adjuster of the fire fail to produce evidence material to the issue of the case and did not come to trial to testify in behalf of the company. Mazzone Investigation Service was the Insurance Company's Main Investigators, fail to produce evidence material to the issues of the case and did not come to trial to testify for the Insurance Company.

Fred B. Gewalt of SCS Research located in Barrington, IL. has done all over Joliet taking statement of people about

Plaintiff fail to produce evidence material to the issues of the case and did not come to trial to testify. A Joliet police officer came to the stand and testified that he and another officer were driving past the Plaintiff's business and observed smoke in the area and saw that it was coming from the plaintiff's business, they then called the Fire Department. He did not state any evidence or produce any material to the issue of the case. Fire investigator Derick took the stand and stated that minutes after the fire was put out he momentarily entered the structure and noticed burning in the rear portion of the structure. He did not produce any evidence material to the issue of the case and which is in his possession or under his control.

There were no evidence depositions taken by none of the Investigators. February 8, 1995 trail ended of the case matters with judgement not withstanding the verdict, the defendant, nor his advisors, or investigators provided any evidence essential to the case that gave the Insurance Company reasons for denial or information and evidence material to the jury for such verdict.

COUNT III

BREACH OF CONTRACT

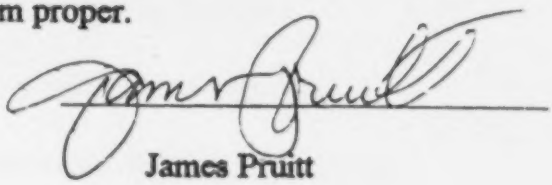
Now comes JAMES PRUITT, plaintiff, and for Count III of his Complaint against NATIONAL CASUALTY COMPANY, defendant, states as follows:

1 - 11. Plaintiff states and realleges paragraphs 1 through 11 of his Complaint as and for paragraphs 1 through 11 of Count III of his Complaint.

12. that NATIONAL CASUALTY COMPANY defendant, in violation and breach of the subject multi-peril insurance policy with JAMES PRUITT, plaintiff, has now denied overage with disregard for JAMES PRUITT, plaintiff, having met the policy criteria for the subject property damage coverage.

WHEREFORE, JAMES PRUITT, plaintiff, for COUNT III

of his Complaint prays fro judgment against NATIONAL CASUALTY COMPANY in the sum of $75,000 for damage to the subject building, $50,000 for damage to his personal property and $2,000.--for weekly lost net business profit from August 8, 1993 and each week thereafter and such other relief as this Court may deem proper.



James Pruitt

James Pruitt

304 N. Broadway

Joliet, Illinois 60435

(815) 723-7586

APPENDIX K

FILED MARCH 6, 1995

IN THE CIRCUIT COURT OF THE

TWELFTH JUDICIAL CIRCUIT WILL COUNTY

ILLINOIS

NO. 93-l-8851

James Pruitt,

Petitioner

Versus

National Casualty Insurance Company,

Respondent

ORDER DENYING POST TRIAL MOTION

for Judgment Notwithstanding Verdict And New Trial

This matter coming to be heard on plaintiff's post trial motion, due notice having been given and the court being fully advised in the premises

IT IS HEREBY ORDERED:

Plaintiff's motion for judgement not withstanding the verdict is denied. Plaintiff's motion for a new trial is denied.

Name: Thomas Finn

Attorney for: Defendant

Address: 309 W. Washington

City: Chicago, IL 60606

Atty. ARDC #: 06189092

Telephone: 312-368-4554

Dated: March 6, 1995

Entered:

/s/ Edwin B. Goobiec
Judge
Twelfth District Circuit Judge